

**WSR 07-18-024**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed August 27, 2007, 9:28 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Northwest Clean Air Agency (NWCAA) Regulation.

Hearing Location(s): Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, on November 8, 2007, at 1:30 p.m.

Date of Intended Adoption: November 8, 2007.

Submit Written Comments to: Mark Asmundson, Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, [masmundson@nwcleanair.org](mailto:masmundson@nwcleanair.org), fax (360) 428-1620, by November 8, 2007.

Assistance for Persons with Disabilities: Contact Scott Allison by October 8, 2007, (360) 428-1617 ext. 200.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The regulation amendments will allow the NWCAA to clarify various sections of our rules and adopt Section 461 to control NOx emissions.

**2007 NWCAA Regulation Revision Summary**

**Amendatory Section**

**SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES**

- Update to accommodate new or revised rules.
- Delete "that are in effect as of July 1, 2005" from 104.2 (federal rules). The NWCAA board adoption date defines which version of the federal regulation is being referenced.

**Amendatory Section**

**SECTION 106 - PUBLIC RECORDS**

- Clarifications.

**Amendatory Section**

**SECTION 113 - SERVICE OF NOTICE**

- Clarifications.

**Amendatory Section**

**SECTION 114 - CONFIDENTIAL INFORMATION**

- Clarifications.

**Amendatory Section**

**SECTION 120 - HEARINGS**

- Clarifications.

**Amendatory Section**

**SECTION 121 - ORDERS**

- Clarifications.

**Amendatory Section**

**SECTION 122 - APPEALS FROM ORDERS OR FORMAL ENFORCEMENT ACTION**

- Rename title.

- Clarifications.

**Amendatory Section**

**SECTION 123 - STATUS OF ORDERS ON APPEAL**

- Clarifications.

**Amendatory Section**

**SECTION 131 - NOTICE TO VIOLATORS**

- Rename title.
- Clarify enforcement procedures and authority.

**Amendatory Section**

**SECTION 132 - CRIMINAL PENALTY**

- Clarifications.

**Amendatory Section**

**SECTION 133 - CIVIL PENALTY**

- Clarifications.

**Amendatory Section**

**SECTION 135 - ASSURANCE OF DISCONTINUANCE**

- Rename title.
- Clarifications.

**Amendatory Section**

**SECTION 150 - POLLUTANT DISCLOSURE—REPORTING BY AIR CONTAMINANT SOURCES**

- Clarifications.
- Notice to NWCAA required for all sources that submit a 40 C.F.R. Part 372 Toxic Release Inventory (TRI) report.

**Amendatory Section**

**SECTION 200 - DEFINITIONS**

- Add definitions for "WASHINGTON ADMINISTRATIVE CODE (WAC)," "GREENHOUSE GASES (GHG)" and "HAZARDOUS AIR POLLUTANT (HAP)."
- Delete the following definitions related to agricultural burning; "AGRICULTURAL OPERATION," "FIELD GRASSES," "TURF GRASSES."
- Amend for clarification definitions of "MODIFICATION," "CONTROL OFFICER," "STATE ACT" and "PREVENTION OF SIGNIFICANT DETERIORATION (PSD)."

**Amendatory Section**

**SECTION 300 - NEW SOURCE REVIEW**

- Clarifications.
- Provide exemptions for some nonroad engines and coffee roasters.

**Amendatory Section**

**SECTION 301 - TEMPORARY SOURCES**

- Correct PSD regulatory citation.

**Amendatory Section**

**SECTION 305 - PUBLIC INVOLVEMENT**

- Correct reference to a state regulation citation.

**Amendatory Section****SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP)**

- Redefine scope of pollutants that the agency can charge AOP fees to include pollutants allowed under state and federal rule.

**Amendatory Section****SECTION 324 - FEES**

- Provide for the establishment of fee categories and fee schedules by resolution adopted by the board of directors of the NWCAA.

**Amendatory Section****SECTION 325 - TRANSFER OR PERMANENT SHUTDOWN**

- Clarify.

**Amendatory Section****SECTION 340 - REPORT OF BREAKDOWN AND UPSET**

- Add a provision to report events with VOC emissions over five-hundred pounds.

**Amendatory Section****SECTION 428 - HAZARDOUS AIR POLLUTANTS**

- Add a twenty-four hour averaging period to the ambient formaldehyde limit.

**Amendatory Section****SECTION 451 - EMISSION OF AIR CONTAMINANT—VISUAL STANDARD**

- Remove 40% opacity limit for existing petroleum catalytic cracking units.
- Remove opacity exemptions for wood waste burners.

**New Section****SECTION 461 - EMISSION OF NITROGEN OXIDES**

- Establish a 0.09 lb NO<sub>x</sub>/MMBtu limit for heaters and boilers > 100 MMBtu/hr.
- Establish a facility-wide aggregate average limit of 0.06 lb NO<sub>x</sub>/MMBtu for heaters and boilers > 100 MMBtu/hr at petroleum refineries.
- Require annual source testing, or a CEM, for heaters and boilers > 100 MMBtu/hr.

**Amendatory Section****SECTION 462 - EMISSION OF SULFUR COMPOUNDS**

- Add 162 ppm H<sub>2</sub>S limit for refinery fuel gas.

**Amendatory Section****SECTION 502 - OUTDOOR BURNING**

- Delete provision allowing for the recouping of fire suppression costs on behalf of fire departments.

**Amendatory Section****SECTION 504 - AGRICULTURAL BURNING**

- Update provisions to be consistent with chapter 173-430 WAC.
- Revise fee schedule.

**Amendatory Section****SECTION 506 - SOLID FUEL BURNING DEVICES**

- Clarifications.

- Update provision for curtailing woodstove use during air quality forecasts and episodes.

**Amendatory Section****SECTION 550 - PREVENTING PARTICULATE MATTER FROM BECOMING AIRBORNE**

- Rewrite to be more specific regarding expectations for operators of access roads, unloading equipment, transfer points, unpaved traveled surfaces, parking areas, and other sources of potential fugitive particulate matter.

**Amendatory Section****SECTION 570 - ASBESTOS CONTROL STANDARDS**

- Rewrite alternative means of compliance provisions.

**Amendatory Section****SECTION 580 - VOLATILE ORGANIC COMPOUND CONTROL**

- Delete provision that exempts refineries from applying Section 580 if there is a similar overlapping federal NSPS or NESHAP program.
- Rewrite the petroleum refinery equipment leak provisions to reflect "enhanced" leak detection and repair.

**Amendatory Section****SECTION 590 - PERCHLOROETHYLENE DRY CLEANERS**

- Rewrite to be consistent with MACT 40 C.F.R. 63 Subpart M and WAC 173-400-075(7).

Statutory Authority for Adoption: Chapter 70.94 RCW. Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Northwest Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South Second Street, Mount Vernon, WA, (360) 428-1617 ext. 208.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

August 23, 2007

Mark Asmundson

Director

**AMENDATORY SECTION****SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES**

104.1 All provisions of State Law as it now exists or may be hereafter amended, which is pertinent to the operation of the NWCAA, is hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the Washington State Clean Air Act (RCW 70.94), the Administrative Procedures Act (RCW 34.05) and RCW 43.21A and 43.21B and the following state rules: WAC 173-400, (except – 035, -070(8), -099, -100, -101, -102, -104, -110, -114, -116, -171), WAC 173-401, WAC 173-406, WAC 173-407, WAC 173-420, ((~~WAC 173-421, WAC 173-422~~)), WAC 173-425, WAC 173-430, WAC 173-433, WAC 173-434, WAC 173-435, WAC 173-450,

WAC 173-460, WAC 173-470, WAC 173-474, WAC 173-475, (~~WAC 173-480~~), WAC 173-481, WAC 173-490, WAC 173-491, WAC 173-492, WAC 173-495, WAC 173-802, and WAC 197-11.

104.2 All provisions of the following federal rules (~~that are in effect as of July 1, 2005~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, B, C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, K, Ka, Kb, L, M, N, Na, O, P, Q, R, (~~(S)~~) U, V, W, X, Y, Z, AA, AAA, (~~(BB)~~) CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, AAA, BBB, DDD, FFF, GGG, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, HHHH, IIII, KKKK and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, B, C, D, E, F, H, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, J, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, XX, WW, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, JJJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, DDDDD, EEEEEE, FFFFFF, GGGGG; and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

Amended: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**

**SECTION 106 - PUBLIC RECORDS**

106.1 The purpose of this section is to implement the requirements of RCW 42.56 Public Records. (~~(RCW 42.17-250 - 42.17.320 (Public Disclosure Law - Public Records))~~)

106.2 Definitions

106.21 The terms "agency", "public record", and "writing" shall have the same meaning as stated in RCW 42.17-020.

106.3 Public records available

106.31 All public records of the NWCAA are available for public inspection and copying at its office located at 1600 South Second Street, Mount Vernon, Washington 98273-5202 pursuant to these rules subject to subsections 106.32, 106.33, and 106.34 of this section.

106.32 Availability of public records is subject to exemptions and requirements of RCW (~~(42.17.310)~~) 42.56-070.

106.33 When a public record includes information, the disclosure of which would lead to an unreasonable invasion of personal privacy, and the NWCAA becomes aware of this fact, the NWCAA shall delete such information before making the record available.

106.34 (~~Public records requested may not be readily available for immediate inspection. If the requested records are not readily available, the NWCAA shall notify the requester when such records will be available.~~) Within 5 days of receiving a public records request the NWCAA will respond by either:

(a) Providing the records requested

(b) Acknowledging the request and providing a reasonable estimate of time the agency needs to respond to the request, or

(c) Denying the public request.

106.4 Records Index. The NWCAA does not maintain an index of just the public records listed in RCW (~~(42.17.260)~~) 42.56.070. The NWCAA's Board of Directors are of the opinion that the establishment of such an index would be unduly burdensome and interfere with the NWCAA's operation because a significant and integral portion of the NWCAA's records are exempt from public inspection and copying pursuant to RCW (~~(42.17.310)~~) 42.56.070. The release of such records would be an unreasonable invasion of personal privacy or the violation of the confidentiality of records and information provisions of the State Clean Air Act (RCW 70.94.205).

The NWCAA is in substantive compliance with RCW (~~(42.17.260)~~) 42.56.070 by making available for public inspection and copying public records listed in RCW (~~(42.17.260 (2)(a), (b), (c), (d), (e), and (f))~~) 42.56.070 (7)(a)(b), (8) and (9). These include promulgated regulations of the NWCAA, final opinions made in adjudicated cases, minutes and resolutions of the Board of Directors, monthly activity reports, policy memorandums of the Control Officer, logs of Notice of Violations issued, upset, breakdown and startup reports, assessment of penalties, index of registered sources, annual emission inventor(~~ies~~)y summaries and summaries of ambient air monitoring data, annual state and federal grant applications, including the annual program plan, certification to operate, inspection reports for air pollution sources, variance and notice of construction records with confidential records and information deleted in accordance with RCW 70.94.205.

The Control Officer or designee shall assist any person to obtain public records requested from the NWCAA's record files.

106.5 Request for public records.

106.51 All requests for inspection or copying (~~made in person at the NWCAA office~~) of public records shall be made on a form (~~(substantially)~~) as follows:

106.52 REQUEST FOR PUBLIC RECORDS

Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_  
 Time and date for inspection of records: \_\_\_\_\_  
 Description of records: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I certify that lists of individuals (~~((names))~~) obtained through this request for public records will not be used for (~~((political or))~~) commercial purposes.

Signature: \_\_\_\_\_

FOR NWCAA USE:

Number of Copies: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
 Per Page Charge: \$ \_\_\_\_\_ Total Charge: \$ \_\_\_\_\_

All requests made in person may be made at the NWCAA (~~((the))~~) office (~~((between the hours of 9:00 a.m. to 12:00 Noon and 1:00 p.m. to 4:00 p.m.))~~) during regular business hours, Monday through Friday, excluding legal holidays.

A request for inspection or copying of public records may be made by mail (~~((in a letter))~~), email or fax containing the following information:

- (a) The name and address of the person making the request and the organization the person represents.
- (b) The time of day and calendar date on which the person wishes to inspect the public records.
- (c) A description of the public records requested.
- (d) A statement whether access to copying equipment is desired.
- (e) A phone number where the person can be reached in case the Control Officer or designee needs to contact the person for further description of the material or any other reason.
- (f) A signed statement certifying that the person making the request will not use, for commercial purposes, any information which identifies an individual or individuals. (~~((A statement that the record will not be used for commercial purposes.))~~)

All requests (~~((by mail))~~) must be received by the NWCAA at least three business days before the requested date of inspection to allow the Control Officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

~~((The NWCAA may, in its discretion, fill requests made by telephone.))~~

106.6 Fees. No fee shall be charged for the inspection of public records. For printed, typed and written material a maximum size of 8 1/2" by 14", the NWCAA shall charge a reasonable fee, determined from time to time by the Control Officer, for providing copies of public records and for use of the NWCAA's copy equipment, payable at the time copies are furnished. This charge is the amount necessary to reimburse the NWCAA for its actual costs incident to such copying. Copies of maps, photos, reports, and other nonstandard items shall be furnished at the regular price established by the NWCAA. When other special copy work for nonstandard

items is requested, the fee charged will reflect the total cost, including the time of NWCAA personnel.

106.7 Statement of reason for denial of public records request. When the NWCAA refuses, in whole or part, a written request for inspection of any public record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.

106.8 Review(s) of denials of public records request.

106.81 Any person who objects to the refusal of a written request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the Control Officer or designee which constituted or accompanied the refusal.

106.82 Immediately after receiving a written request for review of a decision denying a public record, the Control Officer or designee denying the request shall refer it to the (~~((Employer Committee of the))~~) NWCAA Board of Directors. The (~~((committee))~~) Board shall promptly consider the matter and either affirm or reverse such refusal. The final decision shall be sent to the objecting persons.

106.83 Whenever the agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request judicial review of the agency decision.

106.9 Protection of public records. In order to adequately protect the public records of the NWCAA, the following guidelines shall be adhered to by any person inspecting such public records:

106.91 No public records shall be removed from the NWCAA premises.

106.92 Inspection of any public record shall be conducted in the presence of a designated NWCAA employee.

106.93 No public records may be marked or defaced in any manner during inspection.

106.94 Public records, which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by the Control Officer or designee.

106.95 Access to file cabinets, shelves, (~~((vaults.))~~) and other storage areas is restricted to NWCAA personnel, unless other arrangements are made with the Control Officer or designee.

Passed: August 9, 1978

Amended: November 8, 2007

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**  
**SECTION 113 - SERVICE OF NOTICE**

113.1 Service of any written notice required by the Regulation of the NWCAA shall be made on the owner, operator (~~((or lessee of equipment.))~~) or his registered agent, as follows:

113.11 Either by mailing the notice (~~((in a prepaid envelope directed to the owner or lessee of the equipment, or his registered agent, at the address listed on his application or order or registration certificate or at the address where the~~

equipment is located, by United States)) ((~~€~~)) certified ((~~M~~)) mail((~~;~~)) with return receipt requested; or

113.12 By ~~((leaving notice with the owner or lessee of the equipment, or his registered agent, or if the owner or lessee is not an individual, with a member of the partnership or other group concerned, or with a managing officer or the registered agent of the corporation under RCW 23 as now or hereafter amended for domestic and foreign corporations respectively.))~~ personal service.

~~((113.2 Service of any written notice required by the Regulations of the NWCAA shall be made on the NWCAA as follows:~~

~~113.21 Either by mailing the notice in a prepaid envelope directed to the NWCAA at its office by United States Certified Mail, return receipt requested; or~~

~~113.22 By leaving the notice at the NWCAA office with an employee of the NWCAA.))~~

113.~~(3)~~2 Any individual, owner, operator, ~~((lessee, managing officer))~~ or registered agent of any business, corporation or government ~~((the NWCAA))~~ coming under the Regulations of the NWCAA may be required to submit evidence that said person is authorized to sign and execute documents on behalf of said corporation, business or government. ~~((the NWCAA)).~~

Passed: January 8, 1969

Amended: February 14, 1973, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 114 - CONFIDENTIAL INFORMATION

114.1 Whenever any records or other information other than ambient air quality data or emission data furnished to or obtained by the NWCAA, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the NWCAA. ~~((Nothing herein shall be construed to prevent the use of records or information by the NWCAA in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, that such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: PROVIDED FURTHER, that emission data furnished to or obtained by the Board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the Board.))~~

114.2 Nothing herein shall be construed to prevent the use of records or information by the NWCAA in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: provided, that such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: provided further, that emission data furnished to or obtained by the Board shall be correlated with applicable emission limita-

tions and other control measures and shall be available for public inspection during normal business hours at the office of the NWCAA.

Passed: January 8, 1969

Amended: October 1, 1969, January 8, 1970, February 14, 1973, July 11, 1973, April 14, 1993, March 13, 1997, November 8, 2007

#### AMENDATORY SECTION

##### SECTION 120 - HEARINGS

120.1 The Board shall retain authority to hold hearings, issue subpoenas for witnesses and evidence, and take testimony under oath and do all things not prohibited by or in a conflict with state law, in any hearing held under the Regulations of the NWCAA.

120.11 The Board shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. The Board shall exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

120.12 All evidence, including but not limited to records, and documents in the possession of the Board of which it desired to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

120.13 Every party shall have the right to cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

120.14 The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Board may utilize their experience, technical competence, and their specialized knowledge in the evaluation of the evidence presented to them.

120.2 Any hearings held under this section, under the Washington Clean Air Act (RCW 70.94~~((+ or RCW 43.21A))~~) and 43.21B) shall be pursuant to the provisions of RCW 34.05 as now or hereafter amended.

Passed: January 8, 1969

Amended: July 8, 1970, February 14, 1977, April 14, 1993, November 8, 2007

#### AMENDATORY SECTION

##### SECTION 121 - ORDERS

121.1 If the Board or Control Officer has reason to believe that any provision of this Regulation has been violated, the Board or Control Officer, may, in addition to any other remedy of law, issue an order, or orders, that the necessary corrective action be taken within a reasonable time. Such order or orders may advise methods for the prevention,

abatement or control of the emission involved for taking of such other corrective actions as may be appropriate. Any order or orders issued as a part of a notice or independently may prescribe the date or dates by which the violation or violations shall cease and may prescribe time schedules for necessary action in preventing, abating or controlling the emissions, and shall be reported to the Board at its next regular meeting.

121.2 In lieu of an order the Board may hold a hearing to determine if a violation has occurred or is occurring and ~~(is)~~ if a finding is made that a violation has occurred may issue an order under Section 121.1 of this Regulation.

121.3 In lieu of an order the Board or Control Officer may require that the alleged violator or violators appear before the ~~(Hearings)~~ NWCAA ~~(b)~~ Board pursuant to ~~(S)~~ state ~~(E)~~ law.

121.4 Any orders issued by the Board or Control Officer are subject to appeal under Section 122 of this Regulation and RCW 43.21.b.

Passed: January 8, 1969

Amended: July 8, 1970, February 14, 1973, November 8, 2007

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 122 - APPEALS FROM ORDERS OR ~~(VIOLATIONS)~~ FORMAL ENFORCEMENT ACTION

122.1 Any order ~~(or notice)~~ issued by the Board or Control Officer shall become final unless, no later than thirty (30) days after the date that ~~(notice and)~~ the order ~~(are)~~ is served, the person aggrieved by the order ~~(or notice of violation)~~ appeals to the Pollution Control Hearings Board as provided by ~~(S)~~ state ~~(E)~~ law.

122.2 ~~(Any order issued by the)~~ The final decision and order of the Pollution Control Hearings Board after a hearing shall become final unless no later than thirty (30) days after the issuance of such order, a petition requesting judicial review is filed in ~~(accordance with the provisions Chapter 34 RCW as now or hereafter amended. When such a petition is filed, the)~~ Superior Court ~~(shall initiate a hearing pursuant to)~~ in accordance with RCW 34.05. ~~(within ninety (90) days after the receipt of the petition requesting judicial review. Every appeal from a decision of the Superior Court shall be heard by the appropriate appellate court as soon as possible. Such appeal shall be considered a case involving issues of broad public import requiring prompt and ultimate determination.)~~

PASSED: January 8, 1969 Amended: July 8, 1970, July 10, 2003, November 8, 2007

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 123 - STATUS OF ORDERS ON APPEAL

123.1 ~~(An)~~ Any order ~~(of the)~~ issued by the Board or Control Officer ~~(issued)~~ under the NWCAA Regulation ~~(of)~~ Section 121 may be appealed. ~~(Such appeal must be filed with the Pollution Control Hearings Board and served on the NWCAA within 30 days after mailing of the order. This is the exclusive means of appeal of such an order.)~~

123.2 ~~(The order)~~ Any order issued by the Board or Control Officer, under appeal in accordance with RCW 43.21B shall remain in effect during the pendency of such appeal unless the Board or Control Officer, at their discretion, issues a ~~(n)~~ ~~(Order staying the effectiveness of the original order)~~ Stay of the original order.

123.3 The appellant may also apply to the Pollution Control Hearings Board at any time for a stay of such order per RCW 43.21B.320.

123.4 Such notice of appeal to the Pollution Control Hearings Board must contain the following information:

- (a) The appellant's name and address; ~~(-)~~
- (b) The date and ~~(docket)~~ number of the order ~~(-)~~ or permit ~~(or license)~~ that is subject to the appeal; ~~(-)~~
- (c) Description of the substance of the order ~~(-)~~ or permit ~~(or license)~~ that is the subject of the appeal; ~~(-)~~
- (d) A clear, separate and concise statement of each error alleged to have been committed; ~~(-)~~
- (e) A clear, separate and concise statement of facts upon which the appellant relies to sustain the statements of error ~~(-)~~; and
- (f) A statement setting forth the relief sought.

123.5 The Board or Control Officer may request the attorney for the NWCAA to bring action in Superior Court ~~(; and attorney, upon request, shall bring an action in Superior Court of the county where the violation has occurred, or the violation may occur,)~~ to obtain any such relief as is necessary to insure compliance with said order, including injunctive relief.

No bond shall be required from the NWCAA as a condition of granting any restraining order or temporary injunction.

Passed: January 8, 1969

Amended: July 8, 1970, February 14, 1973, November 15, 1988, November 8, 2007

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 131 - ~~(VIOLATION NOTICES)~~ NOTICE TO VIOLATORS

131.1 If the Board or Control Officer has reason to believe that a violation of this Regulation has occurred or is occurring, the Board, Control Officer, or duly authorized representative may cause written notice of violation to be served upon the alleged violator. The notice shall summarize ~~(and)~~ the facts alleged to constitute a violation. ~~(thereof)~~. Written notice shall be served at least thirty days prior to the commencement of the imposition of a penalty under RCW 70.94.430 and 70.94.431.

131.2 The Board, Control Officer, or duly authorized representative upon issuance of notice of violation may do any or all of the following:

131.21 Require that the alleged violator respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken.

131.22 Issue an order pursuant to Section 121 of this Regulation.

131.23 Initiate action pursuant to Sections 132, 133, 134 and 135 of this Regulation.

131.24 Hold a hearing pursuant to Section 120 of this Regulation.

131.25 Require the alleged violator or violators appear before the Board.

131.26 Avail itself of any other remedy provided by law.

131.3 Failure to respond as required in Section 131.21 shall constitute a prima facie violation of this Regulation and the Board or Control Officer may initiate action pursuant to Sections 132, 133, 134, 135 of this Regulation.

~~((131.4 Any suspended civil penalty, issued under Section 133 of this Regulation, which is issued as part of a violation shall be applicable in future penalties against the same person for not more than five years from the date of the same suspension. After five years the suspended portion of the Penalty shall be considered void and of no force or effect, appeals notwithstanding.))~~

Amended: April 14, 1993, March 13, 1997, July 14, 2005, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 132 - CRIMINAL PENALTY

132.1 Any person who knowingly violates any of the provisions of Chapter 70.94 RCW or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA, shall be guilty of a ~~((crime))~~ gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars (10,000) per day per violation, or by imprisonment in the county jail for not more than one year, or by both.

132.2 Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a ~~((crime))~~ gross misdemeanor and shall, upon conviction thereof shall be punished by a maximum fine of not less than ten thousand dollars (\$10,000) per day per violation, or by imprisonment for not more than one year, or both.

132.3 Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, shall be guilty of a ~~((crime))~~ class C felony and shall, upon conviction

thereof shall be punished by a maximum fine of not less than fifty thousand dollars, or by imprisonment for not more than ~~((one))~~ five years, or both.

132.4 Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a maximum fine of not ~~((less))~~ more than five thousand dollars.

132.5 Any person who knowingly renders inaccurate any required monitoring device or method ~~((as))~~ required by RCW 70.94, or any ordinance, resolution, regulation, permit or order, ((40 CFR 70.11 (a)(3)(iii))) shall be guilty of a crime and upon conviction ~~((thereof))~~ shall be punished by a fine of not less than ten thousand dollars (\$10,000) per day per violation as required by 40 CFR 70.11 (a)(3)(iii).

132.6 Any person who knowingly makes any false material statement, representation, or certification in any form, in any notice or report required by a permit, ~~((as))~~ required by RCW 70.94, or any ordinance, resolution, regulation, permit or order, ((40 CFR 70.11 (a)(3)(iii))) shall be guilty of a crime and upon conviction thereof shall be punished by a maximum fine of not less than ten thousand dollars (\$10,000) per day per violation as required by 40 CFR 70.11 (a)(3)(iii).

Passed: January 6, 1969

Amended: April 14, 1993, October 13, 1994, March 13, 1997, November 8, 2007

#### AMENDATORY SECTION

##### SECTION 133 - CIVIL PENALTY

133.1 In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of the Clean Air Act in the: Code of Federal Regulations, Revised Code of Washington, Washington Administrative Code or ((Chapter 70.94 RCW, Chapter 70.120 RCW, any of the rules in force under such chapters, including the)) Regulation of the Northwest Clean Air Agency shall be liable for a civil penalty in an amount of not more than ~~((fourteen thousand five hundred dollars (\$14,500)))~~ fifteen thousand dollars (\$15,000) per day per violation. Each violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order shall be liable for a civil penalty of not more than ~~((fourteen thousand five hundred dollars (\$14,500)))~~ fifteen thousand dollars (\$15,000) for each day of continued non-compliance.

133.2 ~~((Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty.))~~ The penalty shall become due and payable ~~((when the person incurring the same receives))~~ 30 days after a notice is served ((in writing from the Control Officer of the NWCAA describing the violation with reasonable particularity and advising such person that the penalty is due)) unless ((a request is made for a hearing to)) an appeal is filed with the Pollution Control Hearings Board (PCHB). ((Within thirty days after the notice is received, the person incurring

the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty. If the amount of such penalty is not paid to the NWCAA within thirty (30) days after receipt of notice imposing the same and request for a hearing has not been made, the attorney for the NWCAA, upon the request of the Control Officer, shall bring an action to recover such penalty in the Superior Court of Skagit County or of the County in which the violation occurred. All penalties recovered under this section by the Board shall be paid unto the treasury of the NWCAA and credited to its funds.)

((To secure the penalty incurred under this Section, the NWCAA shall have a lien on any vessel used or operated in violation of this act which shall be enforced as provided in RCW 60.36.050.))

133.21 Within thirty days after the Notice is served, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty.

133.22 If such penalty is not paid to the NWCAA within thirty (30) days after such payment is due, the Board or Control Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in Superior Court.

133.23 Any judgment shall bear interest as provided by statute until satisfied.

133.3 Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020. ((on the date that the penalty becomes due and payable.)) If ((violations or)) penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the ((s)S)ate ((o)O)ffice of the ((e)E)conomic and ((r)R)evue ((f)F)orecast ((e)C)ouncil.

133.4 In addition to other penalties provided, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments, may be subject to a penalty equal to three times the amount of the original fee owed.

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against the same person within five years from the date of the same suspension. After five years the suspended portion of the Penalty shall be considered void and of no force or effect.

Passed: January 8, 1969

A((MENDED))mended: November 14, 1984, April 14, 1993, September 8, 1993, October 13, 1994, February 8, 1996, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

#### SECTION 135 - ASSURANCE OF DISCONTINUANCE ((ADDITIONAL ENFORCEMENT COMPLIANCE SCHEDULES))

135.1 ((As an additional means of enforcing the Regulations of t))The NWCAA ((the Board or Control Officer)) may accept an assurance of discontinuance of any act or practice deemed in violation of these Regulations from any person engaging in, or who has engaged in, such an act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of these Regulations or an order ((and/or violation)) issued ((pursuant thereto)) which makes the practice unlawful for the purpose of securing an((y)) injunction or other relief from the Superior Court as provided in Section 134.

((135.2 Any assurance of discontinuance or other compliance schedule shall specify, if appropriate, the amount of time required within the overall time limit to accomplish each of the following:

135.21 When plans for compliance will be filed with the NWCAA.

135.22 When a notice of construction will be filed with the NWCAA.

135.23 When the necessary equipment will be ordered and verification that an order has been placed and when delivery of the equipment is expected.

135.24 When the equipment will be installed.

135.25 When the equipment will be tested for compliance with the Regulations)).

Passed: January 8, 1969

Amended: February 14, 1973, August 9, 1978, November 8, 2007

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

#### AMENDATORY SECTION

#### SECTION 150 - POLLUTANT DISCLOSURE - REPORTING BY AIR CONTAMINANT SOURCES

150.1 Every person operating a registered air contaminant source with actual emissions of total criteria air pollutants or volatile organic compounds ((annual emissions of 25 tons or more of a single air pollutant)) greater than 25 tons, or a source subject to the operating permit program including synthetic minor sources shall file ((annually at a time determined by the NWCAA and on forms furnished by the NWCAA a report setting forth)) an annual emissions inventory report that includes:

150.11 The nature of the enterprise.

150.12 A list of process materials which are potentially significant sources of emissions used in, and incidental to, its



manufacturing processes, including by-products and waste products.

150.13 The estimated calendar year emissions of each criteria air pollutant, hazardous air pollutant, volatile organic compound (VOC), and greenhouse gas (GHG) pollutant. The submission shall include the calculations and emission factors used to obtain the estimates. ~~((annual total production of wastes discharged into the air in units and contaminants designated by the NWCAA.))~~

150.14 Annual calendar year emission reports shall be submitted to the NWCAA by no later than April 15 of the following year (e.g., 2010 emission report is due April 15, 2011). ~~((within 105 days after the end of the previous calendar year.))~~ If the emission report is not submitted by the required date and the emissions are used to determine operating permit fees as described in Section 322.4, ~~((then))~~ potential to emit may ~~((will))~~ be used to determine said fees.

150.2 Every person operating a registered source other than those identified in 150.1 may be required by the Control Officer to submit periodic emission reports ~~((based on the nature and amount of pollutants emitted)).~~

150.3 Every person operating ~~((Notwithstanding any exemptions under these Regulations or State or Federal laws)),~~ any source or sources which directly or indirectly emits or contributes air contaminants ~~((to))~~ within the jurisdictional area of the NWCAA may be required to report ~~((annually))~~ to the Control Officer, at a time or times, selected by the Control Officer, ~~((and on forms provided by the Control Officer.))~~ such as ~~((emission))~~ production rates, ~~((or))~~ sales or other data (including quantities of products used or any other information) ~~((and quantities))~~ as may be required to estimate the emissions from the various air contaminant sources. Data will be held confidential under Section 114 if so requested ~~((stipulated))~~ by the owner or manager and such request meets the requirements of Section 114 ~~((same))~~. Such sources include, but are not limited to, dealers in gaseous liquid or solid fossil fuels for public consumption in motor vehicles or for space heating purposes.

150.4 All sources of air pollution that are required to file a Toxic Release Inventory (TRI) in accordance with 40 CFR Part 372, shall send a notice to the NWCAA within 30-days of the TRI Report submittal.

Passed: February 14, 1973

Amended: September 8, 1993, December 8, 1993, November 12, 1999, November 8, 2007

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### [AMENDATORY SECTION] SECTION 200 - DEFINITIONS

ACTUAL EMISSIONS - The actual rate of emissions of a pollutant from an emission unit, as determined in accordance with a) through c) of this definition.

a) In general, the actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal stationary source operation. The

NWCAA shall allow the use of a different time period upon a determination by the NWCAA that it is more representative of normal stationary source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b) The NWCAA may presume that stationary source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

ADVERSE IMPACT ON VISIBILITY - Adverse impact on visibility is defined in WAC 173-400-117.

~~((AGRICULTURAL OPERATION - The growth of crops, the raising of fowl, animals or bees as a gainful occupation.))~~

CONTROL OFFICER - Air Pollution Control Officer of the NWCAA, also known as Director.

~~((FIELD GRASSES - Canary grass, broomegrass, oatgrass, timothy, ryegrass, wheatgrass, and orchard grass planted for seed production.))~~

GREENHOUSE GASES (GHG) - Any gas that absorbs and emits infra-red radiation in the atmosphere. Greenhouse gases include, but are not limited to, water vapor, carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), halogenated fluorocarbons (HCFCs), ozone (O<sub>3</sub>), perfluorinated carbons (PFCs), and hydrofluorocarbons (HFCs).

HAZARDOUS AIR POLLUTANT (HAP) - any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. §7412.

~~((MERCURY CHLOR-ALKALI CELL - A device which is basically composed of an electrolyzer section and a denuder (decomposer) section and utilizes mercury to produce chlorine gas, hydrogen gas, and alkali metal hydroxide.))~~

MODIFICATION - Any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emissions of any air contaminant not previously emitted. ~~((The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.))~~

PREVENTION OF SIGNIFICANT DETERIORATION (PSD) - The program in WAC 173-400-720 through -750 ~~((+4+))~~.

STATE ACT - Washington Clean Air Act (RCW 70.94) and ~~((RCW 43.21A and))~~ 43.21B.

~~((TURF GRASSES - All blue grasses, fescues, and bentgrass planted for seed production.))~~

WASHINGTON ADMINISTRATIVE CODE (WAC) - Regulations of executive branch agencies in the state of Washington, such as the Department of Ecology.

AMENDED: October 13, 1982, November 14, 1984, April 14, 1993, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**AMENDATORY SECTION****SECTION 300 - NEW SOURCE REVIEW**

300.1 A Notice of Construction and/or PSD permit application must be filed by the owner or operator and an Order of Approval and/or PSD permit issued by the NWCAA, or other designated permitting agency, prior to the establishment of any new source, except for:

a) Those stationary sources exempt under NWCAA 300.4 (categorical) or NWCAA 300.5 (emission thresholds); and

b) Relocation of any temporary source operating in accordance with NWCAA Section 301.

For purposes of this section "establishment" shall mean to "begin actual construction", as that term is defined in NWCAA Section 200, and "new source" shall include any "modification" to an existing "stationary source", as those terms are defined in NWCAA Section 200.

300.2 Regardless of any other subsection of this section, a Notice of Construction or PSD permit application must be filed and an order of approval or PSD permit issued by the NWCAA prior to establishment of any of the following new sources:

a) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Subpart ((Part)) AAA((-)) (Wood stoves) and such provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines ((in effect on February 20, 2001));

b) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants) ((in effect on February 20, 2001)), except for asbestos demolition and renovation projects subject to 40 CFR 61.145;

c) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, and Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines ((in effect on February 20, 2001));

d) Any project that qualifies as a new major stationary source, or a major modification;

e) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.

300.3 New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing stationary source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-113, as applicable.

300.4 Emission unit and activity exemptions.

Except as provided in NWCAA 300.1 and 300.2 of this section, establishment of a new emission unit that falls within one of the categories listed below is exempt from new source review. Modification of any emission unit listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The

installation or modification of a unit exempt under this subsection does not require the filing of a Notice of Construction application.

a) Maintenance/construction:

1) Cleaning and sweeping of streets and paved surfaces;

2) Concrete application, and installation;

3) Dredging wet spoils handling and placement;

4) Paving application and maintenance, excluding asphalt plants;

5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house keeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

6) Plumbing installation, plumbing protective coating application and maintenance activities;

7) Roofing application;

8) Insulation application and maintenance, excluding products for resale;

9) Janitorial services and consumer use of janitorial products.

b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks therefore it is recommended that the owner or operator contact the NWCAA to determine the exemption status of storage tanks prior to their installation.

1) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

2) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

3) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

4) Process and white water storage tanks;

5) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);

6) Operation, loading and unloading of storage tanks, less than or equal to 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @21° C;

7) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

8) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

c) A project with combined aggregate heat input capacity ((#)) from combustion units, less than or equal to any ((#)) of the following:

1) Less than or equal to 500,000 Btu/hr ((using)) coal with less than or equal to 0.5% sulfur or other fuels with less than or equal to 0.5% sulfur;

2) Less than or equal to 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

3) Less than or equal to 400,000 Btu/hr wood waste or paper;

4) Less than 1,000,000 Btu/hr ((using)) kerosene, #1, or #2 fuel oil and with less than or equal to 0.05% sulfur;

5) Less than or equal to ~~((4))~~10,000,000 Btu/hr ~~((using))~~ natural gas, propane, or LPG.

Note: the heat input capacity of each combustion unit shall be based on the higher heating value of fuel to be used.

d) Material handling:

1) Continuous digester chip feeders;

2) Grain elevators not licensed as warehouses or dealers by either the Washington State Department of Agriculture or the U.S. Department of Agriculture;

3) Storage and handling of water based lubricants for metal working where organic content of the lubricant is less than or equal to 10%;

4) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm Hg @21°C, with lids or other appropriate closure.

e) Water treatment:

1) Septic sewer systems, not including active wastewater treatment facilities;

2) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

3) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

4) Process water filtration system and demineralizer vents;

5) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

6) Demineralizer tanks;

7) Alum tanks;

8) Clean water condensate tanks.

f) Environmental chambers and laboratory equipment:

1) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

2) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

3) Installation or modification of a single laboratory fume hood;

4) Laboratory calibration and maintenance equipment.

g) Monitoring/quality assurance/testing:

1) Equipment and instrumentation used for quality control/assurance or inspection purpose;

2) Hydraulic and hydrostatic testing equipment;

3) Sample gathering, preparation and management;

4) Vents from continuous emission monitors and other analyzers.

h) Dry Cleaning: Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers and carbon absorption to recover the cleaning solvent.

i) Emergency Stationary Compression Ignition (CI) Internal Combustion Engines (ICE): Any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance and operating less than 500 hours a year. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal

power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary CI ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.

j) ~~((h))~~ Miscellaneous:

1) Single-family residences and duplexes;

2) Plastic pipe welding;

3) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

4) Comfort air conditioning;

5) Flares used to indicate danger to the public;

6) Natural and forced air vents and stacks for bathroom/toilet activities;

7) Personal care activities;

8) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

9) Tobacco smoking rooms and areas;

10) Noncommercial smokehouses;

11) Blacksmith forges for single forges;

12) Vehicle maintenance activities, not including vehicle surface coating;

13) Vehicle or equipment washing (see c) of this subsection for threshold for boilers);

14) Wax application;

15) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

16) Ozone generators and ozonation equipment;

17) Solar simulators;

18) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;

19) Electrical circuit breakers, transformers, or switching equipment installation or operation;

20) Pulse capacitors;

21) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;

22) Fire suppression equipment;

23) Recovery boiler blow-down tank;

24) Screw press vents;

25) Drop hammers or hydraulic presses for forging or metal working;

26) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;

27) Kraft lime mud storage tanks and process vessels;

28) Lime grits washers, filters and handling;

29) Lime mud filtrate tanks;

30) Lime mud water;

31) Stock cleaning and pressurized pulp washing down process of the brown stock washer;

32) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

33) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C;

34) Surface coating, aqueous solution or suspension containing less than or equal to 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;

35) Cleaning and stripping activities and equipment using solutions having less than or equal to 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;

36) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.

#### 300.5 Exemptions Based on Emissions Thresholds

a) Except as provided in NWCAA 300.1 and 300.2 of this section and in this subsection:

1) A new emissions unit that has an uncontrolled potential to emit below each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

2) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

b) The owner or operator seeking to exempt a project from new source review under this section shall notify, and upon request, file a brief project summary with the NWCAA thirty (30) days prior to beginning actual construction on the project. If the NWCAA determines that the project will have more than a de Minimus impact on air quality as defined in 300.5 d), the NWCAA shall require the filing of a Notice of Construction or PSD permit application. The NWCAA may require the owner or operator to demonstrate that the emissions increase from the new emissions unit is smaller than all of the thresholds listed below. In accordance with NWCAA 324.2, a filing and NOC applicability determination fee shall apply when the NWCAA issues a written determination that a project is exempt for new source review.

c) The owner or operator may begin actual construction on the project thirty-one (31) days after the NWCAA receives the project summary, unless the NWCAA notifies the owner or operator within thirty (30) days that the proposed new source requires a Notice of Construction or PSD permit application.

#### d) Exemption threshold table:

POLLUTANT THRESHOLD LEVEL (ton per year)

- 1) Total Suspended Particulates: 1.25
- 2) PM-10: 0.75
- 3) Sulfur Oxides: 2.0
- 4) Nitrogen Oxides: 2.0
- 5) Volatile Organic Compounds: total 2.0
- 6) Carbon Monoxide: 5.0
- 7) Lead: 0.005
- 8) Ozone Depleting Substances: total 1.0 (in effect on July 1, 2000)
- 9) Toxic Air Pollutants: as specified in chapter 173-460 WAC.

300.6 The Control Officer may require that a new source, that would otherwise be exempt under this section, submit a Notice of Construction application and be granted approval as specified in this section. This discretionary

determination shall be based on the nature of air pollution emissions from the stationary source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the proponent shall submit to the Control Officer, appropriate information as necessary to make this determination.

#### 300.7 Notice of Construction - Submittal Requirements

Each Notice of Construction application shall:

- a) be submitted on forms provided by the NWCAA;
- b) be accompanied by the appropriate fee specified in NWCAA 324.2;
- c) be accompanied by a completed State Environmental Policy Act (SEPA) checklist consistent with (~~WAC 197-10-365 and NWCAA Section 312~~) WAC 197-11; and
- d) include a "top down" BACT analysis, as defined at the time of submittal, except where the Federal Clean Air Act requires LAER; and

e) An applicant filing a Notice of Construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, shall send a copy of the application to the responsible federal land manager.

#### 300.8 Notice of Construction - Completeness Determination.

a) Within thirty (30) days after receiving a Notice of Construction or PSD permit application, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of additional information necessary to complete the application.

b) For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

c) For a project subject to PSD review under WAC 173-400-~~720 through -750~~(~~441~~), a completeness determination includes a determination that the application provides all information required to conduct the PSD review.

#### 300.9 Notice of Construction - Final Determination

a) Within sixty (60) days of receipt of a complete Notice of Construction or PSD permit application, the NWCAA shall either issue a final decision on the application or initiate public notice under NWCAA Section 305 on a proposed decision, followed as promptly as possible by a final decision.

b) A person seeking approval to construct or modify a stationary source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the Notice of Construction or PSD permit application required by this section. A Notice of Construction or PSD permit application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. A PSD permit application under WAC 173-400-~~720 through -750~~(~~441~~), a notice of nonattainment area construction application for a major modification in a nonattainment area, or a Notice of Construction application for a major stationary source in a nonattainment area must also comply with WAC 173-400-171.

c) Every final determination on a Notice of Construction or PSD permit application shall be reviewed and signed prior

to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the NWCAA.

d) If the new source is a major stationary source or the change is a major modification, the application shall be processed in accordance with the applicable sections of WAC 173-400-112, 113, 117 and 171. The permitting agency shall:

1) Submit any control technology determination included in a final Order of Approval or PSD permit to the RACT/BACT/LAER clearinghouse maintained by EPA; and

2) Send a copy of the final Order of Approval or PSD permit to EPA.

#### 300.10 Order of Approval - Appeals

An Order of Approval or PSD permit, any conditions contained in an Order of Approval or PSD permit, or the denial of a Notice of Construction or PSD permit application may be appealed to the ~~((p))~~Pollution ~~((e))~~Control ~~((h))~~Hearings ~~((b))~~Board as provided in chapter 43.21B RCW. The NWCAA shall promptly mail copies of each order approving or denying a Notice of Construction or PSD permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the ~~((p))~~Pollution ~~((e))~~Control ~~((h))~~Hearings ~~((b))~~Board.

#### 300.11 Order of Approval - Time Limitations.

An Order of Approval or PSD permit becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. An extension for a project operating under a PSD permit must also comply with public notice requirements in WAC 173-400-171. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date.

#### 300.12 Order of Approval - Change of Conditions.

a) The owner or operator may request, at any time, a change in conditions of an Order of Approval or PSD permit and the NWCAA may approve the request provided the NWCAA finds that:

1) The change in conditions will not cause the stationary source to exceed an emissions standard;

2) No ambient air quality standard or PSD increment will be exceeded as a result of the change;

3) The change will not adversely impact the ability of Ecology or the NWCAA to determine compliance with an emissions standard;

4) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

5) The revised order meets the requirements of this section and WAC 173-400-110, 173-400-112, 173-400-113 and 173-400-720 through -750~~((H4))~~, as applicable.

b) Actions taken under this subsection are subject to the public involvement provisions of NWCAA Section 305 or WAC 173-400-171 as applicable.

c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a Notice of Construction application, that application must be acted upon using the timelines found in NWCAA 300.8 and NWCAA 300.9 and the fee schedule found in NWCAA 324.

300.13 Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.

a) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source or emission unit shall file a Notice of Construction application with the NWCAA. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

b) For projects not otherwise reviewable under NWCAA Section 300, the NWCAA may:

1) Require that the owner or operator employ RACT for the affected emission unit;

2) Prescribe reasonable operation and maintenance conditions for the control equipment; and

3) Prescribe other requirements as authorized by chapter 70.94 RCW.

c) Within thirty (30) days of receipt of a Notice of Construction application under this section the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty (30) days of receipt of a complete Notice of Construction application under this section the NWCAA shall either issue an Order of Approval or a proposed RACT determination for the proposed project.

d) Construction shall not "commence," as defined in NWCAA Section 200, on a project subject to review under this section until the NWCAA issues a final Order of Approval. However, any Notice of Construction application filed under this section shall be deemed to be approved without conditions if the NWCAA takes no action within thirty (30) days of receipt of a complete Notice of Construction application.

e) Approval to replace or substantially alter emission control technology shall become invalid if construction is not commenced within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

#### 300.14 Incorporation of State NSR Regulations

In order to facilitate complete implementation of this section, WAC 173-400-112, -113, -117, ~~-560~~, -700, -710, -720, -730, -740, and -750 are hereby incorporated by reference.

#### 300.15 Order of Approval - Requirements to Comply

It shall be unlawful for an owner or operator of a source or emission unit to not abide by the operating and reporting conditions in the Order of Approval.

PASSED: November 12, 1998 Amended: November 12, 1999, March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 301 - TEMPORARY SOURCES

301.1 This section applies to temporary sources not exempt under NWCAA 300.4 or 300.5, which locate temporarily at sites within the jurisdiction of the NWCAA. Nonroad engines regulated by this section are limited to those listed in a) 3) of the definition of "nonroad engine" found in Section 200 of this Regulation (i.e., those that are portable or transportable, but operate in a stationary manner). The regulation of nonroad engines under this section is subject to the limitations as set forth in 40 CFR Appendix A to Subpart A of 89 - State Regulation of Nonroad Internal Combustion Engines.

301.2 The owner or operator of a temporary source shall be allowed to operate at a temporary location without filing a Notice of Construction application or, for nonroad engines, obtaining a regulatory order from the NWCAA providing that:

- a) The owner or operator notifies the NWCAA each calendar year of the intent to operate within the jurisdiction of the NWCAA at least fifteen (15) days prior to starting operation and pays the appropriate fees identified in NWCAA Section 324.1;
- b) The owner or operator notifies the NWCAA of the intent to relocate within the jurisdiction of the NWCAA at least fifteen (15) days prior to relocation;
- c) The owner or operator supplies sufficient information to enable the NWCAA to determine that the operation will comply with all applicable air pollution rules and regulations;
- d) The operation does not cause a violation of ambient air quality standards;
- e) If the operation is in a nonattainment area, it shall not interfere with the scheduled attainment of ambient standards;
- f) The temporary source operates in compliance with all applicable air pollution rules and regulations;
- g) A temporary source that is considered a major stationary source within the meaning of WAC 173-400-113 shall also comply with the requirements in WAC 173-400-720 through -750~~((+41))~~;
- h) Except for nonroad engines, all temporary sources shall have a valid Order of Approval to Construct from an air quality permitting organization in the State of Washington. The temporary source shall operate in compliance with the conditions set forth in the Order of Approval to Construct. Any reports required by the Order of Approval to Construct shall be submitted to the NWCAA;

i) Permission to operate shall not exceed ninety (90) operating days in any calendar year anywhere within the jurisdiction of the NWCAA. The NWCAA may set specific conditions for operating during that time period. No source shall continue to operate beyond the allowable 90-day period unless an Order of Approval to Construct, or for nonroad engines, a regulatory order, has been issued by the NWCAA. For the purpose of this section, an operating day shall be considered any time equipment operates within a calendar day; and

j) Except for nonroad engines, based on the source type and emission quantity, temporary sources may be subject to new source review at the discretion of the Control Officer.

PASSED: November 12, 1998 Amended: March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007

#### AMENDATORY SECTION

##### SECTION 305 - PUBLIC INVOLVEMENT

305.2 Actions Requiring Public Notice and Comment Period

(A) The NWCAA shall provide public notice and a public comment period in accordance with 305.3 through 305.8 of this Section, before approving or denying any of the following types of applications or other actions:

- (1) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on July 1, 2005) as part of review under Section 300 of this Regulation;
- (2) Any order to determine Reasonably Available Control Technology (RACT);
- (3) Any order to establish a compliance schedule or a variance;
- (4) Any order to demonstrate the creditable height of a stack which exceeds the good engineering practice (GEP) formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;
- (5) Any order to authorize an emissions bubble pursuant to WAC 173-400-~~((+34))~~120;
- (6) Any regulatory order to establish or debit of emission reduction credits (ERC);
- (7) Any order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit;
- (8) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;
- (9) The original issuance and any revisions to a general Order of Approval issued under WAC 173-400-560;
- (10) Any Notice of Construction application or other proposed action for which the NWCAA determines there is substantial public interest;
- (11) Any Notice of Construction application or proposed Order of Approval to Construct revision that receives a request for a public comment period in accordance with 305.1 of this Section.
- (12) Any Notice of Construction application or proposed Order of Approval to Construct revision that would result in a significant emissions increase defined as follows.

Air Pollutant	Potential to Emit in Tons per Year
Carbon Monoxide (CO)	100.0
Volatile Organic Compounds (VOC)	40.0
Sulfur Dioxide (SO <sub>2</sub> )	40.0
Nitrogen Oxides (NO <sub>x</sub> )	40.0
Particulate Matter (PM)	25.0
Fine Particulate Matter (PM-10)	15.0
Lead	0.6
Fluorides	3.0
Sulfuric Acid Mist (H <sub>2</sub> SO <sub>4</sub> )	7.0
Hydrogen Sulfide (H <sub>2</sub> S)	10.0
Total Reduced Sulfur (including H <sub>2</sub> S)	10.0

(B) Any Notice of Construction application designated for integrated review with an application to issue or modify an Air Operating Permit shall be processed in accordance with the Air Operating Permit program procedures and deadlines set forth in WAC 173-401.

Passed: July 14, 2005

Amended: November 8, 2007

#### AMENDATORY SECTION

##### SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP)

322.1 Purpose. The purpose of this section is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the Federal Clean Air Act (FCAA) Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70.94.161 and its implementing regulation Chapter 173-401 of the Washington Administrative Code (WAC).

322.2 Applicability. The provisions of this section shall apply to all sources within the NWCAA jurisdiction excluding those regulated by the Washington State Department of Ecology Industrial Section subject to the requirements of Section 7661(a) of the FCAA or Chapter 173-401-300 WAC.

322.3 Compliance. It shall be unlawful for any person to cause or allow the operation of any source subject to the requirements of Chapter 173-401 WAC without complying with the provisions of Chapter 173-401 WAC and any permit issued under its authority.

##### 322.4 Air Operating Permit Fees.

a) The NWCAA shall levy annual operating permit program fees as set forth in this section to cover the cost of administering its operating permit program.

b) Commencing with the effective date of the operating permit program, the NWCAA shall assess and collect annual air operating permit fees in its jurisdiction for any source specified in Section 7661(a) of Title V of the FCAA or Chapter 173-401-300 WAC (excluding sources regulated by the Washington State Department of Ecology Industrial Section). The total fees required by the NWCAA to administer the program shall be determined by a workload analysis conducted by the staff and approved annually by a resolution by the

Board of Directors. Allocation of the fees to individual affected sources shall be based on the following:

1) Ten percent (10%) of the total fees shall be allocated equally among all affected sources.

2) Ninety percent (90%) of the total fees shall be allocated based on actual emissions of regulated pollutants identified in the most recent annual emission inventory or potential emissions if actual data are unavailable. A regulated pollutant for fee calculation shall include:

Nitrogen oxides (NO<sub>x</sub>);

Volatile organic compounds (VOC's);

Particulate matter with an aerodynamic particle diameter less than or equal to 10μ (PM<sub>10</sub>);

Sulfur dioxide (SO<sub>2</sub>);

Lead; ~~(and)~~

Any pollutant subject to the requirements under Section 112(b) of the FCAA not included in any of the above categories; and

Any pollutant that is subject to any standard promulgated under Section 111 of the FCAA not included in any of the above categories

c) Upon assessment by the NWCAA, fees are due and payable and shall be deemed delinquent if not fully paid within 90 days. Any source that fails to pay a fee imposed under this section within 90 days of the due date shall be assessed a late penalty in the amount of 50 percent of the fee. This late penalty shall be in addition to the fee assessed under this section.

d) The NWCAA shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology to cover the Department of Ecology's program development and oversight costs attributable to subject sources within the NWCAA jurisdiction. Fees for the Department of Ecology shall be allocated to affected sources in the same manner specified in this section.

e) An affected source subject to the operating permit program that is required to pay an annual operating permit program fee shall not be required to pay a registration fee as specified in Section 324.

PASSED: November 12, 1998

Amended: November 12, 1999, November 8, 2007

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 324 - FEES

##### 324.1 Annual Registration Fees

a) The NWCAA shall levy annual registration program fees as set forth in Section 324.1(c) to cover the costs of administering the registration program.

b) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of twenty-five percent (25%) of the registration fee for failure to pay the registration fee within thirty (30) days after the due date. The late penalty shall be in addition to the registration fee.

c) All registered air pollution sources shall pay the appropriate registration fee(s) ~~((listed in Section 324.1.))~~ as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

((REGISTERED-SOURCES	Fee Code	2005	2006	2007
Wastewater treatment plants w/sludge incinerators	RS01	\$615	\$635	\$655
Temporary asphalt plants	RS02	\$360	\$375	\$390
Permanent asphalt plants	RS03	\$725	\$745	\$770
Temporary thermal soil desorption units	RS04	\$360	\$375	\$390
Permanent thermal soil desorption units	RS05	\$725	\$745	\$770
Odor sourcee	RS06	\$725	\$745	\$770
Petroleum-coke handling facility	RS07	\$1,445	\$1490	\$1535
Perchloroethylene dry-cleaners	RS08	\$180	\$190	\$200
Gasoline stations	RS09	\$180	\$190	\$200
Bulk plants	RS10	\$180	\$190	\$200
Chrome plating	RS11	\$180	\$190	\$200
Other sourcees as determined by the Control Officer	RS12	\$180	\$190	\$200
Other temporary-sourcees	RS13	\$180	\$190	\$200
FOR SOURCES NOT LISTED ABOVE: ACTUAL EMISSIONS OF TOTAL CRITERIA AND TOXIC AIR POLLUTANTS				
<10 tons per year	EM01	\$180	\$190	\$200
10 tons per year, < 25 tons per year	EM02	\$905	\$930	\$960
25 tons per year, < 50 tons per year	EM03	\$1,800	\$1855	\$1910
≥ 50 tons per year	EM04	\$2,995	\$3085	\$3180
ADDITIONAL FEES				
Each source test per pollutant, per unit as required in the Approval Order (except initial source test)	STR	\$360	\$375	\$390
Operation of a Continuous Emission or Opacity Monitor (per CEM or COM)	CEM	\$360	\$375	\$390
Each stationary source subject to NSPS, per applicable subpart. Excluding 40 CFR 60 subpart Dc (small boilers) and 40 CFR 60 subpart AAA (woodheaters)	NSPS	\$615	\$635	\$655

((REGISTERED-SOURCES	Fee Code	2005	2006	2007
Each stationary source subject to NESHAP, per applicable subpart. Excluding 40 CFR 63 subpart M (dry cleaners) and 40 CFR 60 subpart N (chrome platers)	NESHAP	\$615	\$635	\$655
Synthetic minor designation	SM	\$615	\$635	\$655
Odor sourcee	ODOR	\$725	\$745	\$770))

324.2 New Source Review Fees

a) New source fees ~~((listed in Section 324.2))~~ shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.

b) The applicable fee(s) shall be established in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA.

	((2005	2006	2007
Filing fee	\$130	\$135	\$140
NSR FEES IN ADDITION TO THE FILING FEE: for each piece of equipment or control equipment			
General (not classified below)	\$615	\$635	\$655
Fuel Burning Equipment (as an aggregate)			
0.5 MM Btu/hr, but <10 MM Btu/hr	\$310	\$320	\$330
10 MM Btu/hr, but <100 MM Btu/hr	\$1,205	\$1,240	\$1,275
100 MM Btu/hr, but <250 MM Btu/hr	\$11,940	\$12,300	\$12,670
250 MM Btu/hr, but <500 MM Btu/hr	\$17,935	\$18,475	\$19,030
500 MM Btu/hr, but <1000 MM Btu/hr	\$29,925	\$30,825	\$31,750
1000 MM Btu/hr	\$47,850	\$49,285	\$50,765
Minor Order of Approval to Construct change	\$310	\$320	\$330
Asphalt plant	\$905	\$930	\$960
Coffee roaster	\$310	\$320	\$330
Dry cleaner	\$180	\$185	\$190
Chrome plater	\$180	\$185	\$190
Gasoline stations	\$360	\$370	\$380
Bulk plants	\$360	\$370	\$380
Refuse burning equipment			
< 6 tons per day	\$1,205	\$1,240	\$1,275
6 tons per day, but < 12 tons per day	\$3,595	\$3,705	\$3,815



	<del>((2005</del>	<u>2006</u>	<u>2007</u>
12 tons per day, but < 250 tons per day	\$23,890	\$24,605	\$25,345
250 tons per day	\$47,775	\$49,210	\$50,685
Paint spray booth	\$180	\$185	\$190
Other sources as determined by the Control Officer	\$180	\$185	\$190
ADDITIONAL FEES			
Synthetic minor determination	\$905	\$930	\$960
SEPA threshold determination (NWCAA lead agency, 14 day comment period)	\$310	\$320	\$330
Air toxics review	\$490	\$505	\$520
Major stationary source, major modification, PSD thresholds	\$2,400	\$2,470	\$2,545
PSD applicability analysis	\$3,610	\$3,720	\$3,830
Each stationary source subject to NSPS, per subpart, excluding 40 CFR 60 subpart D (small boilers) and 40 CFR 60 subpart AAA (woodheaters)	\$1,205	\$1,240	\$1,275
Each stationary source subject to NESHAP, per subpart, excluding 40 CFR 63 subpart M (dry cleaners) and 40 CFR 60 subpart N (chrome platers)	\$1,205	\$1,240	\$1,275
Public notice (plus publication fee)	\$260	\$270	\$280
Public hearing (plus publication fee)	\$615	\$635	\$655
NOC applicability determination	\$260	\$270	\$280))
Each CEM, COM, or alternate monitoring device required	\$615	\$635	\$655
Each source test per pollutant, per unit as required in Approval Order	\$615	\$635	\$655
Bubble application	\$1,205	\$1,240	\$1,275
Netting analysis	\$615	\$635	\$655

	<del>((2005</del>	<u>2006</u>	<u>2007</u>
Non-exempt units under Title IV acid rain program))	\$2,870	\$2,955	\$3,045)

324.3 Variance Fee. ~~((3,000.00))~~ The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. ~~((850.00))~~ The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or undertaking voluntary and enforceable emission reduction projects.

PASSED: November 12, 1998

Amended: November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**

**SECTION 325 - TRANSFER OR PERMANENT SHUTDOWN**

325.1 A registration, regulatory order, approval to construct, operate or use any article, machine, equipment, or other contrivance, shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another provided that, registered sources which are designed to be portable and are moved from one location to another may retain the same registration so long as they abide by the requirements of NWCAA Sections 300 and 301.

325.2 The registered owner or operator shall report the transfer of ownership or permanent shutdown of a registered (~~(s)~~)source(~~(s)~~) to the NWCAA within ninety (90) days of shutdown or transfer. The report shall contain the following information:

- a) Legal name of the existing business as registered with the NWCAA (~~((owner or operator))~~);
- b) Effective date of the shutdown or transfer;
- c) Description of the affected emission units; and
- d) Name and telephone number of the (~~((registered))~~) owner, (~~((s or))~~) operator, (~~((s))~~) and authorized representative.
- e) The new legal name of the business, and legal names and contact information for the owner, operator and registered agent.

325.3 Any party that assumes ownership and/or operational control of a registered "source" shall file a written report with the NWCAA within ninety (90) days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

- a) Legal name of the business before and after the transfer (~~((company or))~~) and individuals involved in the transfer;
- b) Effective date of the transfer;

- c) Description of the affected emission units; and
- d) Name and telephone number of the owner (~~(s-ef)~~) operator (~~(s)~~) and authorized representative.

325.4 In the case of a permanent shutdown, process and pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g., disconnection of power to equipment, mechanical positioning that inhibits processing; placing of padlocks on equipment to prevent operation).

Passed: February 4, 1970 Amended: February 14, 1973, July 10, 2003, July 14, 2005, November 8, 2007

#### AMENDATORY SECTION

##### SECTION 340 - REPORT OF BREAKDOWN AND UPSET

340.1 If a breakdown or upset condition occurs which results in or may have resulted in an exceedance of an emission and/or ambient air quality standard established by this Regulation or an emission release to the air that requires NWCAA notification as specified in 40 CFR 302 (CERCLA) or 40 CFR 355 (SARA) or 500 pounds of VOC, the owner or operator of the source shall take the following actions:

a) The upset or breakdown shall be reported as promptly as possible and in no event later than twelve (12) hours to the NWCAA.

b) For Title V Air Operating Permit sources, the responsible official, or their designee, shall submit a full report no later than 30 days after the end of the calendar month in which the breakdown or upset occurred that resulted in an exceedance of an ambient or emission standard of this Regulation, or greater than 500 pounds of VOC. The report shall be submitted on forms provided by the NWCAA and must include, at a minimum, the known causes, corrective action taken, preventive measures put in place to reduce the possibility of or eliminate a recurrence, and an estimate of the quantity of emissions above the applicable limit caused by the event. Other non-Title V Air Operating Permit sources shall file a full report to the NWCAA within 30 days upon the request of the Control Officer.

340.2 Compliance with the requirements of this section does not relieve the owner or operator of the source from the responsibility to maintain continuous compliance with all the requirements of this Regulation nor from the resulting liabilities for failure to comply.

340.3 It shall be prima facie evidence of violation of this Regulation if:

a) any control equipment is turned off, broken down or otherwise inoperative, and a notice of breakdown has not been filed under Section 340.1, or

b) any other equipment creates new or increased emissions to the atmosphere as the result of being turned off, broken down or otherwise inoperative, and a notice of breakdown has not been filed under Section 340.1.

340.4 Excess emissions due to breakdowns and upsets shall be considered unavoidable, and not subject to penalty, provided the stationary source adequately demonstrates that:

a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; ~~(and)~~

c) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice; and(-)

d) The emissions did not result in a violation of an ambient air quality standard.

Amended: November 14, 1984, October 14, 1987, April 14, 1993, October 13, 1994, February 8, 1996, July 14, 2005, November 8, 2007

#### AMENDATORY SECTION

##### SECTION 428 - HAZARDOUS AIR POLLUTANTS

428.1 Chlorine concentrations in the ambient air shall not exceed one (1.0) part per million on a one (1) hour time weighted average.

428.11 Chlorine concentration in the ambient air shall not exceed seven (7.0) parts per million for more than 5 minutes.

428.2 Ambient emissions standards for mercury. Emissions to the atmosphere from sources including the processing of mercury or to recover mercury, chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, shall not exceed 2300 grams of mercury per twenty-four (24) hour period.

428.21 Testing methods shall be in accordance with the US-EPA CFR, Title 40, Chapter 61, National Emission Standards for Hazardous Air Pollutants, Appendix B—Test Methods of other test methods approved by the Control Officer.

428.3 Formaldehyde concentrations in the ambient air shall not exceed five hundredths of a part per million by volume (0.05 ppmv) per twenty-four (24) hour period.

428.4 Ambient standards for other hazardous or toxic air pollutants may be adopted by the Control Officer based upon best available information on health risk.

Amended: November 14, 1984, April 14, 1993, November 8, 2007

#### AMENDATORY SECTION

##### SECTION 451 - EMISSION OF AIR CONTAMINANT - VISUAL STANDARD

451.1 No person shall cause or permit the emission, for any period aggregating more than 3 minutes in any 1 hour, of an air contaminant from any source which, at the point of emission, or within a reasonable distance of the point of emission, exceeds 20% opacity except as follows:

451.11 When the owner or operator of a source supplies valid data to show that the opacity is in excess of 20% as a result of the presence of condensed water droplets, and that the concentration of the particulate matter, as shown by a source test approved by the Control Officer, is less than 0.10 (0.23 g/m<sub>3</sub>) grain/dscf.

451.12 Excess emissions as a result of soot blowing or grate cleaning shall not occur for more than fifteen minutes in any eight hour period or another schedule approved by the Control Officer provided that the owner or operator can demonstrate to the satisfaction of the Control Officer that the time limitations of this subsection are not being exceeded.

~~((451.13 Emissions from a wood waste burner during:~~

~~451.131 One startup period not to exceed 30 consecutive minutes in any consecutive 24 hour period.~~

~~451.132 Thirty consecutive minutes in any 8 hour period during break and lunch periods, provided that the emissions do not exceed 60% opacity for a period of more than 6 consecutive minutes. Provided further, that the operator takes immediate action to correct the condition.~~

~~451.14 Emissions from existing petroleum catalytic cracking units shall not exceed 40% opacity for more than an aggregate of 3 minutes in any 1 hour.))~~

Amended: April 14, 1993, October 13, 1994, May 11, 1995, November 8, 2007

#### NEW SECTION

##### **SECTION 461 - EMISSION OF NITROGEN OXIDES**

461.1 This section applies to all heaters and boilers combusting gaseous or liquid fuels as a primary fuel and having a heat input capacity greater than or equal to 100 MMBtu/hour. The heat input capacity is the maximum actual or design heat capacity, whichever is greater, stated in British thermal units per hour (BTU/hr) generated by the stationary source and shall be expressed using the higher heating value (HHV) of the fuel unless otherwise specified. This section does not apply to CO Boilers associated with Fluidized Catalytic Cracking Units or Calciners.

461.2 By no later than January 1, 2013, emissions of nitrogen oxides from any heater or boiler subject to this Section shall not exceed 0.090 pounds per MMBtu, one-hour average. Should a facility elect to utilize a Continuous Emission Monitoring System (CEMS) to measure nitrogen oxides for any heater or boiler subject to this Section, emissions of nitrogen oxides for such heater or boiler shall not exceed 0.090 pounds per MMBtu, annual average.

461.3 By no later than January 1, 2015, the combined BTU weighted average emissions from all affected heaters and boilers shall not exceed 0.060 pounds of nitrogen oxides per MMBtu.

461.4 Notwithstanding sections 461.2 and 461.3 above, a facility may petition for approval of an alternate nitrogen oxide control plan, including an alternative implementation schedule, based upon considerations of practicability. If approved, such an alternate control plan may include more stringent emission standards than those established in this Section.

461.5 Compliance shall be demonstrated by conducting at least one source test for each heater or boiler subject to this Section per calendar year. The test(s) shall be conducted in accordance with NWCAA Appendix A, using EPA Methods 2 and 7E, unless an alternative test method is approved in advance by the Agency. Testing shall be conducted while firing the unit above seventy percent of its rated firing capacity.

For any individual heater or boiler, a continuous emissions monitor, installed and operated in accordance with NWCAA Appendix A, may be used in lieu of annual source testing.

461.6 The emission limits set forth in this section are not applicable during startup, shutdown and firing rates below thirty percent of the firing capacity of the unit.

Passed: November 8, 2007

#### AMENDATORY SECTION

##### **SECTION 462 - EMISSION OF SULFUR COMPOUNDS**

462.1 It shall be unlawful for any person to cause or permit the emission of air contaminants from any equipment if the air contaminants emitted as measured in the stack contain sulfur compounds calculated as sulfur dioxide, of more than one thousand (1,000) parts per million (2.62 mg/m<sup>3</sup>), averaged for a sixty consecutive minute period, except as otherwise provided by a specific emission restriction adopted by the NWCAA and/or the DOE. For the purpose of this section, all sulfur present in gaseous compounds containing oxygen shall be deemed present as sulfur dioxide.

462.2 Emissions of sulfur compounds calculated to be in excess of 1,000 parts per million (2.62 mg/m<sup>3</sup>) at any emission point, averaged for a sixty consecutive minute period, shall not constitute a violation of Section 462.1 of this Regulation, provided such person responsible for the emission provides reasonable evidence that such emissions will not cause ground level concentrations on adjacent property to exceed the values indicated in Section 410 of this Regulation, and can demonstrate to the Control Officer there is no practical method of reducing the concentration to the above levels or less.

462.3 All concentrations of sulfur dioxide referred to in this Section are on a volumetric dry basis. For combustion emissions, the exhaust gas volume shall be corrected to 7% oxygen.

462.4 The sulfur content of refinery fuel gas shall not exceed 162 ppm H<sub>2</sub>S based on a three-hour rolling average.

Passed: July 8, 1969

Amended: August 4, 1971, January 9, 1974, August 9, 1978, July 1, 1987, October 14, 1987, April 14, 1992, October 13, 1994, March 13, 1997, November 8, 2007

#### AMENDATORY SECTION

##### **SECTION 502 - OUTDOOR BURNING**

.....

502.5 OUTDOOR BURNING PERMIT PROGRAM/REQUIREMENTS

.....

C. FEES.

1. Permitting agencies may charge a fee for any permit issued, provided that a fee must be charged for all permits issued for weed abatement fires and fire fighting instruction fires.

2. All fees must be set by rule and must not exceed the level necessary to recover the costs of administering and enforcing a permit program.

TYPE OF PERMIT	FEE
Annual training (single location)	<u>\$325.00</u> ( <del>(\$250.00)</del> )/year
Extinguisher Training	\$25.00/training exercise
Structure training	<u>\$150.00</u> ( <del>(\$50.00)</del> )/training exercise
Weed abatement	\$2.00/acre; \$25.00 minimum per location

#### D. PERMIT DECISIONS.

1. Permitting agencies must approve with conditions, or deny outdoor burning permits as needed to achieve compliance with this section.

2. All permits must include conditions to satisfy general prohibitions and requirements that apply to all outdoor burning.

3. All permits may require other conditions, such as restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions.

4. Permitting agencies may also include conditions to comply with other laws pertaining to outdoor burning.

5. Any person having an outstanding penalty obligation to the NWCAA as a result of a violation of Section 502, except under appeal to the Pollution Control Hearings Board (PCHB) or other judicial body, shall be denied additional outdoor burning permits until the remaining balance is discharged.

#### E. RESIDENTIAL BURNING BY GENERAL PERMIT.

1. A general permit for residential burning is adopted for use:

a. Where the NWCAA has adopted the general permit by reference, and

b. Any designated enforcing agencies have agreed that a general permit is appropriate for residential burning, and

c. The public has been notified where the permit applies.

2. All burning under a general permit must:

a. Comply with condition (4) of this subsection.

b. Be restricted to the first and second weekends (Saturday and Sunday) in April and the third and fourth weekends in October unless the enforcing agency substitutes alternative days and adequate notice of the substitution is provided to the public. Alternative days may only be substituted if conditions on the prescribed days are unsuitable due to such things as poor air quality, high fire danger, unfavorable meteorology, likely interference with a major community event, or difficulty for enforcement.

3. The NWCAA may adopt a general permit for residential burning that prescribes a different set of days, not to exceed eight days per year, provided that adequate public notice of where and when the permit will apply is given.

4. The following conditions apply to all residential burning allowed, in the nonurban areas of any county with an unincorporated population of less than fifty thousand, without a permit or allowed under a general, verbal, or electronic permit. Persons unable to meet these and any other requirements must apply and receive a written permit before burn-

ing. Failure to comply with all requirements voids any applicable permit.

a. The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions of each day.

b. A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area.

c. The fire must not include prohibited materials, construction/demolition debris or any substance other than natural vegetation.

d. The fire must not include materials hauled from another property.

e. If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately.

f. A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

g. No fires are to be within fifty feet of structures.

h. Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

i. Any burn pile must not be larger than four feet in diameter and three feet high.

j. Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

k. If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than one-half inch.

l. No fire is permitted within five hundred feet of forest slash.

#### F. FIELD RESPONSE AND ENFORCEMENT

1. Any agency that issues permits, or adopts a general permit for any type of burning in an area, is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements unless another agency has agreed to be responsible.

2. Except for enforcing Section 502.4 (E)(1)(d), the NWCAA will be responsible for enforcing any requirements that apply to burning that are prohibited or exempt from permits in areas of its jurisdiction, unless another agency agrees to be responsible.

3. Permitting agencies and enforcing agencies may require that corrective action be taken, and may assess penalties to the extent allowed (~~under their the NWCAA~~) if they discover noncompliance.

4. (~~A fire protection the NWCAA called to respond to, control, or extinguish an illegal or out of control fire may charge, and recover from the person responsible for the fire, the costs of its response and control action. The NWCAA may assist a fire protection the NWCAA, in fire suppression cost recovery, when assessing a penalty associated with a Notice of Violation.~~)

PASSED: June 14, 2001. Amended: July 10, 2003, July 14, 2005, November 8, 2007

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**

**SECTION 504 - AGRICULTURAL BURNING**

~~((All definitions in Section 200 are fully applicable to Section 504~~

~~**AG TASK FORCE**—Means the agricultural burning practices and research task force.~~

~~**AGRICULTURAL OPERATION**—Means a farm that can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or proof that the land is designated in a classification for agricultural use. It also includes activities conducted by irrigation district or drainage district personnel as part of water system management.~~

~~**AGRICULTURAL LAND**—Land that is designated in a classification for agricultural use or land that is used for the operation of commercial agriculture and can be substantiated by the most recent year's IRS schedule F form.~~

~~**BEST MANAGEMENT PRACTICE**—Means the criteria established by the agricultural burning practices and research task force (Ag task force).~~

~~**FARMER**—Means any person engaged in the business of growing or producing for sale upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons using such products as ingredients in a manufacturing process, or persons growing or producing such products primarily for their own consumption.~~

~~**FIELD GRASSES**—Canary grass, brome grass, oat grass, timothy grass, wheat grass, forage grass, and orchard grass planted for seed production.~~

~~**FURF GRASSES**—All blue grasses, fescues, and bent grass and perennial rye grass planted for seed production.)~~

504.1 Purpose. This section establishes fees and controls for agricultural burning in the NWCAA jurisdiction in order to minimize adverse health effects and environmental

impacts, consistent with best management practices and the responsibilities of the NWCAA under WAC 173-430, RCW 70.94.650, 70.94.656, and 70.94.745. All agricultural burning as defined in WAC 173-430 shall be conducted in accordance with the provisions of that chapter.

504.2 Applicability. This section applies to agricultural burning in all areas of the NWCAA jurisdiction unless specifically exempted. Nothing in Section 504 shall apply to silvicultural burning or ~~((open))~~ other outdoor burning (Chapter 173-425 WAC).

504.3 ~~((Prohibitions))~~ Conditions. All agricultural burning, except for agricultural burning that is incidental to commercial agricultural activities (RCW 70.94.745), requires a permit and payment of a fee ((an agricultural burning permit) issued by the Authority. ((No person shall practice or permit the practice of agricultural burning in any of the following circumstances and locations:))

504.4 Fees. All agricultural burning permits require a fee in accordance with Chapter 70.94.650. Propane flaming for the purpose of vegetative debris removal is considered agricultural burning (WAC 173-430-030(1)). The fee shall be the greater of the minimal fee level and the variable fee level.

504.41 - Minimum fee levels:

504.411 - Twenty-five dollars per calendar year per agricultural operation based on burning up to ten acres or equivalent;

504.412 - Fifty dollars for orchard tear-out burning per calendar year per agricultural operation based on burning debris of up to twenty acres or equivalent.

504.42 - Variable fee levels (based on acreage or equivalent):

504.421 - Through calendar year 2007, the fee is two dollars per acre.

504.422 - Beginning in calendar year 2008, the fee is two dollars and twenty-five cents per acre.

504.43 - Permit fee uses. The permit fee is used to offset the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration. The permit fee shall be distributed as follows:

<u>Fee Level</u>	<u>Section</u>	<u>Local Administration</u>	<u>Research</u>	<u>Ecology Administration</u>
<u>\$25.00</u>	<u>WAC 173-430-040 (4)(a)(i)</u>	<u>\$12.50</u>	<u>\$12.50</u>	<u>\$0</u>
<u>\$50.00</u>	<u>WAC 173-430-040 (4)(a)(ii)</u>	<u>\$12.50</u>	<u>\$12.50</u>	<u>\$25.00</u>
<u>2007 - \$2.00 per acre</u>	<u>WAC 173-430-040 (4)(b)(i)</u>	<u>\$1.25 per acre</u>	<u>\$0.25 per acre</u>	<u>\$0.50 per acre</u>
<u>2008 and beyond - \$2.25 per acre</u>	<u>WAC 173-430-040 (4)(b)(ii)</u>	<u>\$1.25 per acre</u>	<u>\$0.50 per acre</u>	<u>\$0.50 per acre</u>

~~((504.31 When the applicant is not a farmer with an agricultural operation or a government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.~~

504.32 When the materials to be burned include anything other than natural vegetation.

504.33 During a no burn day as declared by the Authority or during an air pollution episode for a defined geographical area.

~~504.34 When burning causes a nuisance or the Authority determines that a nuisance is likely to result from burning.~~

504.35 If the applicant is unable to show to the satisfaction of the Authority that burning, as requested, is reasonably necessary to successfully carry out the enterprise in which the applicant is engaged; and constitutes a best management practice; and is necessary because no practical alternative is reasonably available.

~~504.36 If the burning includes any material other than natural vegetation generated on the property, which is the burning site, or material transported to the burning site by wind or water.~~

~~504.4 General Conditions. Considering population density and local conditions affecting air quality, the Authority shall establish conditions for all permits to minimize air pollution as much as practical. Conditions may include but are not limited to restricting the permissible hours of burning, restricting burning to a defined season, restricting the size of fires, imposing requirements for good combustion practice, and restricting burning to specified weather conditions. Any person who practices or permits the practice of agricultural burning shall, in addition to any specific permit conditions imposed, comply with all of the following conditions:~~

~~504.41 Whenever any stage of an air pollution episode or no burn day is declared, all fires shall be extinguished by withholding new fuel as appropriate, and allowing the fire to burn down.~~

~~504.42 The fire shall be attended by a person who is responsible for the fire and is capable of extinguishing the fire. The fire must be extinguished before it is left unattended.~~

~~504.43 Burning shall occur during daylight hours only, or a more restrictive period as determined by the Authority. No burning is allowed at night except as a best management practice.~~

~~504.44 Permission from a landowner, or the owner's designated representative, must be obtained before starting the fire.~~

~~504.45 The responsible person shall notify the local fire district prior to igniting a fire. Compliance with all fire safety regulations of the local fire protection agency, including any no burn directives they may issue, is required.~~

~~504.46 If it becomes apparent at any time to the Authority that limitations must be imposed to reduce smoke and prevent air pollution and/or protect property and the health, safety, and comfort of persons from the effects of burning, the Authority shall notify the permittee or responsible person and any limitation so imposed shall become a condition under which the permit is issued.~~

~~504.47 Burning only natural vegetation.~~

~~504.48 Burning when wind takes smoke away from roads, homes population centers, or other public areas, to the greatest extent possible.~~

~~504.49 No burning during adverse meteorological conditions.~~

~~504.5 Administrative requirements.~~

~~504.51 All agricultural burning permits require a fee. This fee shall not exceed the level determined by the agricultural burning practices and research task force, pursuant to Chapter 70.94.650 RCW.~~

~~504.52 The fee shall be the greater of:~~

~~504.521 A minimum fee of twenty five dollars per year per farm which shall be used as follows: Twelve dollars and fifty cents of which goes to the agricultural burning research fund, and the remaining twelve dollars and fifty cents will be kept by the Authority to cover the costs of administering and enforcing this regulation; or~~

~~504.522 A variable fee based on the acreage or equivalent of agricultural burning, as well as the means of burning, which will be used as follows: Up to one dollar per acre for applied research, twenty five cents per acre for ecology administration and one dollar and twenty five cents per acre for local permit program administration. If the agricultural burn is to be accomplished by using a propane or natural gas fired mobile field burning unit, then the local permit program administration fee shall be sixty cents per acre.~~

~~504.53 The Authority shall act on a complete permit application within seven days from the date such complete application is filed.~~

~~504.6 Exemptions. Burning that is incidental to commercial agricultural activities shall be allowed without applying for any permit and without the payment of any fee if all of the following conditions are met:~~

~~504.61 The operator notifies the local fire department within the area where the burning is to be conducted;~~

~~504.62 The burning does not occur during a no burn day, or any stage of impaired air quality declared under RCW 70.94.715; and~~

~~504.63 Only the following items are burned: orchard prunings, organic debris along fence lines or irrigation or drainage ditches, or organic debris blown by wind.~~

~~504.64 Standing vegetation to be burned is one acre or less in size. This exempt acre (or less) may be burned in addition to that acreage included in fence lines or irrigation or drainage ditches.~~

~~504.7 Other laws. Nothing herein shall relieve any applicant for a permit hereunder from obtaining any permits, licenses, or other approvals required by any other laws, regulations, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.))~~

PASSED: February 14, 1973; AMENDED: By Adoption of WAC 18-16 January 24, 1972, August 9, 1978, June 7, 1990, May 9, 1996, May 14, 1998, November 12, 1998, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

#### SECTION 506 - SOLID FUEL BURNING DEVICES ((STANDARDS))

##### 506.1 PURPOSE.

This Section establishes emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices in order to maintain compliance with the National Ambient Air Quality Standards (NAAQS) for fine particulates and to further the policy of the NWCAA as stated in Section 102 of this Regulation.

##### 506.2 DEFINITIONS.

Unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning as defined in Chapter 173-433-030 WAC:

ADEQUATE SOURCE OF HEAT - means a permanently installed furnace or heating system, connected or disconnected from its energy source, designed to maintain seventy degrees Fahrenheit at a point three feet above the floor in all

normally inhabited areas of a residence or commercial establishment.

ANTIQUÉ WOOD STOVE - is a stove manufactured before 1940 which has a current market value substantially greater than a common wood stove manufactured during the same time period.

CERTIFIED - means a solid fuel-burning device that meets emission performance standards when tested by an accredited independent laboratory and labeled according to procedures specified by EPA in the Code of Federal Regulation - Title 40 Part 60 Subpart AAA - Standards of Performance for Residential Wood Heaters as amended through July 1, 1990; or a solid fuel-burning device that has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457.

COOKSTOVE - means a wood-fired appliance designed primarily for cooking food and containing an integrally built in oven, with an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate, ash pan and an ash clean-out below the firebox. Any device with a fan or heat channels used to dissipate heat into the room shall not be considered a cookstove.

ECOLOGY - means the Washington State Department of Ecology.

EPA - means the United States Environmental Protection Agency.

SEASONED WOOD - means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.

SOLID FUEL BURNING DEVICE - means a device that burns wood, coal, or any other non-gaseous or non-liquid fuels, and includes wood stoves or any device burning any solid fuel except those prohibited by WAC 173-433-120. This also includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which have a heat input of less than one million British thermal units per hour.

SUBSTANTIALLY REMODELED - means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period.

TREATED WOOD - means wood of any species that has been chemically impregnated, painted, or similarly modified to improve resistance to insects, weathering or deterioration.

WOOD STOVE - means a wood-fueled appliance, other than a cookstove, capable of and intended for residential space heating and domestic water heating that meets the criteria contained in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" (~~as amended through July 1, 1990~~). Any combination of parts, typically consisting of but not limited to, doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a wood stove, is considered a wood stove.

#### 506.3 EMISSION PERFORMANCE STANDARDS.

(A) Solid Fuel Burning Devices - A person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away any solid fuel burning device in Washington unless it has been certified and labeled in accordance with procedures

and criteria specified in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" (~~as amended through July 1, 1990~~), complies with WAC 173-433-100, and meets the following particulate air contaminant emission standards:

(1) Two and one-half grams per hour for catalytic wood stoves; and

(2) Four and one-half grams per hour for all other solid fuel burning devices.

(B) Fireplaces. A person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away a factory built fireplace unless it has been tested in accordance with procedures and criteria specified in WAC 51-50-31200. Particulate emission factors for factory-built fireplaces shall not exceed 7.3 g/kg.

#### 506.4 INSTALLATION OF SOLID FUEL HEATING DEVICES.

(A) No new solid fuel burning device shall be installed in new or existing buildings unless such device is either Oregon Department of Environmental Quality (~~(phase)~~) Phase II or US EPA certified to meet current Washington State standards or a pellet stove either certified or exempt from certification in accordance with CFR 40 Part 60 Subpart AAA - Standards of Performance for Residential Wood Heaters. (RCW 70.94.455)

(B) No used solid fuel burning device shall be installed in new or existing buildings unless such device has been certified and labeled in accordance with ((is)) either Oregon Department of Environmental Quality (~~(phase)~~) Phase II or US EPA ((certified)) certification standard or is a pellet stove either certified or exempt from certification by the US EPA in accordance with CFR 40 Part 60 Subpart AAA - Standards of Performance for Residential Wood Heaters. (RCW 70.94.-455)

(C) An adequate source of heat other than a solid fuel burning device is required in all new and substantially remodeled residential and commercial construction. The rule shall apply to

(1) Areas designated by a county to be an urban growth area under RCW 36.70A; and

(2) Areas designated by the EPA as being in non-attainment for particulate matter. (RCW 70.94.455 and WAC 51-40-0510)

(D) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 EPA standards for wood stoves or equivalent standard established by the state building code council by rule in accordance with 70.94.457 RCW.

#### 506.5 OPACITY STANDARDS.

(A) Opacity level. A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period. This restriction does not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

(B) Test methods and procedures. EPA reference method 9 - Visual Determination of Opacity of Emissions from Stationary Sources shall be used to determine compliance with this Section.

(C) Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard shall constitute

prima facie evidence of unlawful operation of an applicable solid fuel burning device. This Regulation will be enforced on a complaint basis and through observations of inspectors certified to read opacity. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device.

#### 506.6 PROHIBITED FUEL TYPES

(A) A person shall not burn any substance, other than properly seasoned fuel-wood, in a solid fuel burning device (RCW 70.94.477).

(B) A person shall not burn paper in a solid fuel burning device other than the amount of colorless paper necessary to start a fire.

#### 506.7 LIMITATIONS ON BURNING WOOD FOR HEAT

(A) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(1) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area:

(2) Not burn wood in any solid fuel burning device except those which are either Oregon Department of Environmental Quality Phase II or US EPA certified or certified by Ecology under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the US EPA in accordance with CFR 40 Part 60 Subpart AAA - Standards of Performance for Residential Wood Heaters (RCW 70.94.455), in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by NWCAA or any authority, for that area. A first stage of impaired air quality is reached when:

(a) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four hour average; and

(b) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five (35) micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level; and

(B) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by NWCAA or any authority, for that area. A second stage of impaired air quality is reached when:

(1) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle [particulate] pollution trend;

(2) Fine particulates are at an ambient level of sixty micrograms (60) per cubic meter measured on a twenty-four hour average; and

(3) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms (60) per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

#### ((CURTAILMENT

(A) Except as provided in Section 506.9, any person in a residence or commercial establishment that has an adequate source of heat without using a solid fuel burning device shall

~~not use any solid fuel burning device under the following circumstances:~~

~~(1) Whenever Ecology has declared curtailment under an air pollution episode for the geographical area.~~

~~(2) Whenever Ecology or the NWCAA has declared curtailment under the first stage of impaired air quality for the geographical area unless the device is either Oregon Department of Environmental Quality Phase II or EPA certified or certified by Ecology or a pellet stove either certified or exempt from certification in accordance with Title 40 Part 60 of the Code of Federal Regulations. A first stage of impaired air quality is reached when particulates two and one-half microns and smaller in diameter are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average.~~

~~(3) Whenever Ecology or the NWCAA has declared curtailment under a second stage of impaired air quality. A second stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of one hundred five micrograms per cubic meter measured on a twenty-four hour average.)~~

~~((B)) (C) Any person responsible for a solid fuel burning device already in operation at the time curtailment is declared under a stage of impaired air quality or an episode shall extinguish that device by withholding new solid fuel for the duration of the episode.~~

~~((C)) (D) Compliance with the above solid fuel burning device curtailment rules may be enforced after a time period of 3 hours has elapsed from the time the curtailment is declared. Smoke visible from a chimney, flue or exhaust duct three hours from the time of declaration of the curtailment shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that smoke was not caused by an applicable solid fuel burning device.~~

#### 506.8 GENERAL EMISSION STANDARDS.

(A) Emissions detrimental to persons or property. No person shall cause or permit the emission of any air contaminant from any solid fuel burning device, in sufficient amounts and of such characteristics and duration as is likely to be injurious or cause damage to human health, plant or animal life, or property; or which unreasonably interfere with enjoyment of life and property.

(B) Odors. Any person who shall cause or allow the generation of any odor from any solid fuel burning device which may interfere with any other property owner's use or enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

#### 506.9 EXEMPTIONS.

(A) The provisions of Section 506.7 shall not apply to any person who possesses a valid written exemption approved by the NWCAA. The NWCAA may allow written exemptions to any person who demonstrates any of the following to the satisfaction of the NWCAA:

~~(1) ((B))~~ An economic need to burn solid fuel for residential space heating purposes by qualifying for energy assistance under the low income energy assistance program.



~~(2)~~ ~~((C))~~ That his/her heating system, other than a solid fuel heating device, is inoperable for reasons other than his/her own actions.

~~(a)~~ ~~((H))~~ That there is no adequate source of heat and the structure was constructed or substantially remodeled prior to July 1, 1992.

~~(b)~~ ~~((2))~~ That there is no adequate source of heat and the structure was constructed or substantially remodeled after July 1, 1992 and is outside an urban growth area, as defined in RCW 36.70A.

~~(B)~~ ~~((D))~~ Written exemptions shall be valid for a period determined by the NWCAA and shall not exceed one year from the date of approval.

Passed: July 14, 2005 Amended: November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 550 - PREVENTING PARTICULATE MATTER FROM BECOMING AIRBORNE

550.1 It shall be unlawful for any person or operation to cause or permit material to be handled, transported or stored without ~~((using Reasonably Available Control Technology))~~ taking reasonable precautions to prevent the release of fugitive particulate matter to the ambient air.

550.2 It shall be unlawful for any person to cause or permit a building or its appurtenances to be constructed, altered, repaired or demolished, or conduct abrasive blasting, without ~~((using Reasonably Available Control Technology))~~ taking reasonable precautions to prevent the release of fugitive particulate matter to the ambient air.

550.3 It shall be unlawful for any person to cause or permit the release of fugitive particulate matter to the ambient air from public or private lots, roadways, access roads, ~~((or))~~ open areas, loading/unloading equipment, transfer points, and other sources of particulate matter (i.e. fugitive dust), without taking reasonable precautions. ~~((using Reasonably Available Control Technology.))~~ Reasonable precautions may include, but are not limited to:

550.31 The use of water or approved chemical dust suppressant on PM containing surfaces (e.g. access roads, etc.) and/or materials prior to and during activities that may release PM into the air. Re-application may be required periodically to maintain effectiveness;

550.32 The use of enclosed conveyors, containment, and covered containers when handling and transferring PM containing materials;

550.33 The covering of loads when transporting PM containing material; and

550.34 The limiting of vehicle speed on all unpaved surfaces.

550.4 It shall be unlawful for any person to cause or permit the emission of particulate matter which becomes deposited upon the property of others in sufficient quantities and of such characteristics and duration as is, or is likely to be, inju-

rious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

PASSED: January 8, 1969

Amended: February 14, 1973, August 9, 1978, October 14, 1987, April 14, 1993, November 12, 1999, July 14, 2005, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### AMENDATORY SECTION

##### SECTION 570 - ASBESTOS CONTROL STANDARDS

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##### 570.7 ((ALTERNATE MEANS OF COMPLIANCE)) COMPLIANCE WITH OTHER RULES

Other government agencies have adopted rules that may apply to asbestos projects regulated under these rules including, but not limited to, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, and the Department of Labor and Industries. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

##### ((a) Friable Asbestos Containing Material Removal Alternative

An alternate asbestos removal method may be employed for friable asbestos-containing material if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to the Control Officer that the planned control method will be equally as effective as the work practices contained in Section 570.6(b) of this Regulation in controlling asbestos emissions. The property owner or the owner's agent shall document through air monitoring at the exhaust from the controlled area that the asbestos fiber concentrations outside the controlled area do not exceed 0.01 fibers/cc, 8-hour average.

The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as that required by 570.6(b), and may revoke the Order of Approval for cause.

##### b) Nonfriable Asbestos Containing Material Removal Alternative

An alternate asbestos removal method may be employed for nonfriable asbestos-containing material if a Competent Person or AHERA Project Designer has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to the Control Officer that the planned control method will be equally as effective as the work practices contained in 570.6(b) of this Regulation in controlling asbestos emissions.

The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as that required by 570.6(b), and may revoke the Order of Approval for cause.

~~e) Leaving Nonfriable Asbestos-Containing Material in Place During Demolition~~

~~Nonfriable asbestos-containing material may be left in place during a demolition, if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls, and demonstrates to the Control Officer that the asbestos-containing material will remain nonfriable during all demolition activities and the subsequent disposal of the debris.~~

~~The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the asbestos-containing material remains nonfriable, and may revoke the Order of Approval for cause.))~~

Passed: November 12, 1998 Amended: July 14, 2005, November 8, 2007

**AMENDATORY SECTION**

**SECTION 580 - VOLATILE ORGANIC COMPOUND CONTROL**

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SECTION 580.2 - Petroleum Refineries

580.21 This section shall apply to all petroleum refineries with a crude oil or feed stock capacity greater than three hundred eighteen thousand liters (2,000 barrels) per day.

580.22 It shall be unlawful for any person to cause or allow the disposal of VOC from the vacuum producing systems covered under this subsection except as follows:

580.221 Noncondensable VOC shall be piped to an appropriate firebox, incinerator or to a closed refinery system.

580.222 Hot wells associated with contact condensers shall be tightly covered and the collected VOC introduced into a closed refinery system.

580.23 It shall be unlawful for any person to cause or allow the operation of a wastewater separator with annual VOC emissions estimated by the NWCAA to exceed 25 tons, when such operation does not comply as follows:

580.231 Wastewater separator forebays shall incorporate a floating pontoon or fixed solid cover with all openings sealed totally enclosing the compartmented liquid contents, or a floating pontoon or a double deck-type cover equipped with closure seals between the cover edge and compartment wall. Collected vapors shall not be discharged to the atmosphere.

580.232 Accesses for gauging and sampling shall be designed to minimize VOC emissions during actual use. All access points shall be closed with suitable covers when not in use.

580.24 It shall be unlawful for any person to cause or allow a process unit turnaround which does not comply with the following conditions:

580.241 The VOC contained in a process unit to be depressurized for turnaround shall be introduced to a closed refinery system, combusted by a flare, or vented to a disposal system.

580.242 The VOC pressure in a process unit following depressurization for turnaround shall be less than five pounds

per square inch gauge (psig) before venting to the ambient air.

580.243 The owner or operator shall keep a record of each process unit turnaround not in compliance with 580.242.

580.244 The owner or operator shall keep a record of each process unit turnaround listing the date the unit was shut down, the estimated vessel VOC concentration when the VOC was first emitted, and the estimated total quantity of VOC emitted.

580.25 Equipment for the reduction, collection or disposal of VOC shall be maintained and operated in a manner commensurate with accepted industrial practices.

~~((580.26 Any petroleum refinery process unit, storage facility or other operation (including drains) subject to federal VOC or HAP standards (NSPS, Benzene Waste NES-HAP, Petroleum Refinery NESHAP, etc.) is exempt from the requirements of NWCAA 580.3 through NWCAA 580.10. Such exemption shall take effect upon the date of required compliance with the federal standard.))~~

PASSED: December 13, 1989

Amended: February 8, 1996, November 8, 2007

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580.8 - Petroleum Refinery Equipment Leaks

580.81 This section shall apply to all components (pump seals, compressor seals, pipeline valves and relief valves) handling volatile organic compounds at petroleum refinery process units and loading sites ~~((which utilize butane or lighter hydrocarbons as a primary feedstock. The process units shall include alkylation, polymerization, and LPG loading.))~~ This section does not apply to systems or facilities in which or to which natural gas or refinery fuel gas are supplied.

580.82 It shall be unlawful to install or operate a sample point at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second suitable closure. Exceptions to this requirement are the ends of a pipe or line connected to pressure relief valves, aspirator vents or other devices specifically required to be open for safety protection. The sealing device shall be removed only when a sample is being taken or during maintenance operations.

580.83 It shall be unlawful for any person to cause or allow the operation of a petroleum refinery unless such person conducts a fugitive leak detection and repair program for process units specified in 580.81 and 580.82 consistent with the following provisions: ~~((of 40 CFR 60.591-60.593. Where compliance with 40 CFR 60.591-60.593 results in any expansion of a facilities current LDAR program or modification of an existing facility, the date of applicability for the new portion of the program shall be August 31, 1998.))~~

580.831 Maintain a written LDAR program description including a master list of program components.

580.832 LDAR program information including components, leak monitoring data, and repair re-monitoring data shall be recorded and maintained using an electronic system. The system shall record data identifying the date and time of the monitored event, and the operator and instrument used in the monitored event.

580.833 Calibration drift assessments of the LDAR monitoring equipment in accordance with 40 CFR Part 60

Method 21 shall be conducted at a minimum, at the end of each monitoring shift. If any calibration drift assessment after the initial calibration shows a negative drift exceeding 10%, all valves and pumps that were monitored since the last calibration and that had readings greater than 100 ppm shall be re-monitored. Maintain records of all instrument readings from the calibration drift assessments.

580.834 Leak detection monitoring shall be conducted according to 40 CFR Part 60 Appendix A Method 21 with the following minimum frequencies:

Valves shall be monitored at least quarterly

Pumps shall be monitored at least monthly

580.835 Leak detection monitoring shall be conducted using the following maximum leak definitions:

Valves - 500 ppm (measured as methane)

Pumps - 2000 ppm (measured as methane)

580.836 Leaking components shall be repaired, and remonitored not less than 15 days after the leak is detected unless the component is placed on the "delay of repair" list.

580.837 Sign off by the unit supervisor is required to attest that a leaking component is technically infeasible to repair without process unit shutdown before the component is eligible for inclusion on the "delay of repair" list.

580.84 Pressure relief devices that are connected to an operating flare header, vapor recovery device, inaccessible valves, storage tank valves and valves that are not externally regulated are exempt from the monitoring requirements of this Section.

PASSED: December 13, 1989

Amended: March 13, 1997, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## AMENDATORY SECTION

### SECTION 590 PERCHLOROETHYLENE DRY CLEANERS

590.1 Applicability. This section applies to all dry cleaning systems using perchloroethylene.

#### 590.2 Definitions.

AREA SOURCE - Any perchloroethylene dry cleaning facility that does not have the potential to emit more than 10 tons per year of perchloroethylene to the atmosphere.

BIWEEKLY - Any 14-day period of time.

CARBON ADSORBER - A bed of activated carbon into which an air-perchloroethylene gas-vapor stream is routed and which adsorbs the perchloroethylene on the carbon.

DESORPTION - Regeneration of a carbon adsorber by removal of the perchloroethylene adsorbed onto the carbon.

HALOGENATED HYDROCARBON DETECTOR - A portable device capable of detecting vapor concentrations of perchloroethylene of 25 parts per million by volume and indicating a concentration of 25 parts per million by volume or greater by emitting an audible or visual signal that varies as the concentration changes.

PERCEPTIBLE LEAKS - Any perchloroethylene vapor or liquid leaks that are obvious from:

a. The odor of perchloroethylene; or

b. Visual observation, such as pools or droplets of liquid;

or

c. The detection of gas flow by passing fingers over the surface of equipment.

PERCHLOROETHYLENE GAS ANALYZER - A flame ionization detector, photoionization detector, or infrared analyzer capable of detecting vapor concentrations of perchloroethylene of 25 parts per million by volume.

RECONSTRUCTION - For the purpose of section 590, means the replacement of any components of a dry cleaning system to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new dry cleaning system.

RESIDENCE - Any dwelling or housing in which people reside excluding short-term housing that is occupied by the same person for a period of less than 180 days (such as a hotel room).

VAPOR LEAK - A perchloroethylene vapor concentration exceeding 25 parts per million by volume (50 parts per volume as methane) as indicated by a halogenated hydrocarbon detector or perchloroethylene gas analyzer.

#### 590.3 ((2)) ((General Requirements.)) Machine Design:

a. It shall be unlawful for any person to cause or allow the operation of a perchloroethylene dry cleaning system unless all the air-perchloroethylene gas-vapor stream is vented through a carbon adsorber or refrigerated condenser. Dry cleaning machines installed ((after)) between September 21, 1993 and December 21, 2005 shall use a refrigerated condenser((-)), and shall comply with 590.41(a).

b. The owner of operator of each dry cleaning system installed after December 21, 2005, at an area source shall route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning machine drum through a non-vented carbon absorber or equivalent control device immediately before the door of the dry cleaning machine is opened. The carbon absorber must be desorbed in accordance with manufacturer's instructions.

c. All dry cleaning machines shall use a refrigerated condenser and a carbon adsorber as described in 590.2(b), and shall comply with 590.41(b) by July 28, 2008.

590.4((3)) General Operation and Maintenance Requirements. It shall be unlawful for any person to cause or allow the operation of any perchloroethylene dry cleaning system unless all of the following conditions are met:

#### 590.((3))41 Leak Detection and Repair

a. Conduct a visual inspection of the dry cleaning system at least once a week for perceptible leaks while the system is operating. ((All perceptible leaks shall be repaired within 24 hours of detection. If repair parts must be ordered to repair a leak, the parts shall be ordered within 2 working days of detecting the leak, and the repair parts shall be installed within 5 working days after receipt.))

b. An inspection must include an examination of these components for condition and perceptible leaks

1. Hose and pipe connections, fittings, couplings, and valves;

2. Door gaskets and seats;

3. Filter gaskets and seats;

4. Pumps;

5. Solvent tanks and containers;

6. Water separators;

7. Muck cookers;

8. Stills;

9. Cartridge filter housings.

c. Conduct vapor leak inspections monthly while the dry cleaning system is running using a halogenated hydrocarbon detector or perchloroethylene gas analyzer that is operated according to the manufacturer's instructions. The operator shall place the probe inlet at the surface of each component interface where leakage could occur and move it slowly along the interface periphery. Any inspection conducted according to this paragraph shall satisfy the requirements to conduct an inspection for perceptible leaks as described in 590.41(a).

d. All perchloroethylene dry cleaning systems shall be in compliance with 590.41(c) by July 28, 2008.

e. All perceptible and/or vapor leaks shall be repaired within 24 hours of detection. If repair parts must be ordered to repair a leak, the parts shall be ordered within 2 working days of detecting the leak, and the repair parts shall be installed within 5 working days after receipt.

590.~~(3)~~42 Drain cartridge filters in their housing or other sealed container for at least 24 hours before discarding the cartridges;

590.~~(3)~~43 Close the door of each dry cleaning machine except when transferring articles to or from the machine;

590.~~(3)~~44 Store all perchloroethylene, and wastes containing perchloroethylene, in a closed container; and

590.~~(3)~~45 Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

590.46 Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

590.47 Keep a copy on-site of the design specifications and operating manuals for all emission control devices.

590.~~5~~(4) Requirements for Refrigerated Condensers. It shall be unlawful for any person to cause or allow the operation of any perchloroethylene dry cleaning system using a refrigerated condenser unless all of the following conditions are met:

590.~~(4)~~51 The air temperature at the outlet of the refrigerated condenser installed on a dry-to-dry machine(~~;- dryer, or reclaimer~~) must reach 45°F (7°C) or less during the cool-down period. Compliance shall be determined by continuously monitoring the outlet temperature during the cool-down period using a permanently installed temperature sensor that is accurate to within 2°F (1°C);

590.~~(4)~~52 The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11°C). Compliance shall be determined by continuously monitoring the inlet and outlet temperatures during the cool-down period using permanently installed temperature sensors that are accurate to within 2°F (1°C);

590.~~(4)~~53 The refrigerated condenser shall be operated (~~with a diverter valve~~) so that (~~prevents~~) air drawn into the dry cleaning machine does not (~~from~~) pass(~~ing~~) through the refrigerated condenser when the door of the machine is open; and

590.~~(4)~~54 The refrigerated condenser shall not vent the air-perchloroethylene gas-vapor stream while the dry cleaning machine drum is rotating (~~or, if installed on a washer, until the washer door is opened~~).

590.~~6~~(5) Requirements for Carbon Adsorbers. It shall be unlawful for any person to cause or allow the operation of any perchloroethylene dry cleaning system using a carbon adsorber unless all of the following conditions are met:

590.~~(5)~~61 The concentration of perchloroethylene at the exhaust of the carbon adsorber shall not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber; and

590.~~(5)~~62 Compliance shall be determined by weekly measurements of the concentration of perchloroethylene at the outlet of the carbon adsorber using a halogenated hydrocarbon detector or perchloroethylene gas analyzer (~~colorimetric detector tube~~) that is accurate to within 25 ppm. (~~If the dry cleaning system was constructed on or before December 8, 1991, monitoring shall commence by September 23, 1996. If the dry cleaning system was constructed after December 8, 1991, monitoring shall commence immediately.~~)

590.7 ~~(6)~~ Recordkeeping. Each dry cleaning facility shall have an Operation and Maintenance Plan and the following records which shall be kept on-site and available for inspection upon request by the NWCAA.

590.~~(6)~~71 A record of dates and results of all monitoring, inspections, and repair of the dry cleaning system.

590.~~(6)~~72 If a refrigerated condenser is used on a dry-to-dry machine(~~-dryer, or reclaimer~~), a weekly record of the air temperature measured at the outlet of the refrigerated condenser during the cool-down period to verify compliance with Subsection 590.~~(4)~~51.

~~(590.63 If a refrigerated condenser is used on a washer, a weekly record of the difference between the air temperatures measured at the inlet and outlet of the refrigerated condenser to verify compliance with Subsection 590.42.)~~

590.~~(64)~~73 If a carbon adsorber is used on a dry cleaning system, a weekly record of outlet perchloroethylene concentration to verify compliance with 590.~~(51)~~61.

590.~~(65)~~74 A record of the volume of perchloroethylene purchased each month including receipts of perchloroethylene purchases and a calculation of the amount of perchloroethylene purchased over the previous 12 months. All receipts of perchloroethylene purchases must be retained for 5 years.

590.8 ~~(7)~~ Prohibitions.

a. It shall be unlawful to operate a multi-machine dry cleaning operation in which washing and drying are performed in different machines (transfer system) after December 31, 1999.

b. After July 27, 2006 it shall be unlawful to install or reconstruct a dry cleaning system in a building with a residence.

c. After December 21, 2020, it shall be unlawful to operate a dry cleaning system that is located in a building with a residence.

590.9 ~~(8)~~ Major Source Requirements. If the dry cleaning system is located at a facility that emits 10 tons or

more of perchloroethylene annually, the facility must meet the additional requirements set forth in 40 CFR Part 63, Subpart M.

~~((590.9 Exemptions. Dry cleaning systems that commenced construction or reconstruction prior to December 8, 1991 are exempt from 590.4 and 590.5 if the amount of perchloroethylene purchased over the previous 12 months is less than 140 gallons.))~~

590.10 New sources subject to Section 590 that begin operation after October 1, 2007 shall notify the NWCAA within thirty (30) days of start-up. This notice shall include the name and address of the facility, its owner and or operator, and a statement on the facility's status of compliance with this section.

PASSED: February 8, 1996 Amended: July 14, 2005, November 8, 2007

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 07-18-094**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)

[Filed September 5, 2007, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-07-132.

Title of Rule and Other Identifying Information: The department is creating and repealing sections in chapter 388-101 WAC, Certified community residential services and support.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on November 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRULESCOORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 6, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by October 30, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to:

- (1) Comply with the governor's executive order 05-03 plain talk;
- (2) Simplify language, eliminate the question and answer format, reorganize and renumber the chapter so that the

requirements are clearer for certified community residential service providers to understand;

(3) Clarify issues that have been brought to the attention of the department;

(4) Update rules to comply with statute changes; and

(5) Repeal all sections in current chapter 388-101 WAC and create sections as described in (2) above without making substantive changes to current requirements.

Reasons Supporting Proposal: To make the rule:

(1) Easier to read and understand and enforce;

(2) Easier to find information by changing the format;

(3) Easier to comply with by clarifying issues that have been brought to the attention of the department; and

(4) Up-to-date with statute changes.

Statutory Authority for Adoption: Chapters 71A.12 and 74.34 RCW.

Statute Being Implemented: Chapters 71A.12 and 74.34 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: John Gaskell, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-3210; Implementation and Enforcement: Joyce Stockwell, Director, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-2401.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Residential care services analyzed the proposed rule amendments and concludes that costs to small businesses will be minor, if there are any costs at all. The primary purposes of the proposed amendments are to clarify preexisting requirements and to update existing rules to conform to changes in procedures, Washington state statutes, or rules of other Washington state agencies.

As a result, the preparation of a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting John Gaskell, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail [gaskejw@dshs.wa.gov](mailto:gaskejw@dshs.wa.gov).

August 28, 2007

Stephanie E. Schiller  
Rules Coordinator

## DEFINITIONS

### NEW SECTION

**WAC 388-101-3000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means:

- (1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

**"Case manager"** means the division of developmental disabilities case resource manager or social worker assigned to a client.

**"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

**"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

**"Chemical restraint"** means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

**"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

**"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

**"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.

**"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.

**"Department"** means the Washington state department of social and health services.

**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than the vulnerable adult's profit or advantage.

**"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

**"Group home"** means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide residential services to two or more clients who are unrelated to the provider.

**"Group training home"** means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"Immediate"** or **"Immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

**"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

**"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

**"Individual support plan"** means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

**"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

**"Legal representative"** means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attor-

ney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

**"Managing client funds"** means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or
- (3) Limits the client's access to funds by not allowing funds to be spent.

**"Mechanical restraint"** means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

**"Medication assistance"** means assistance with self-administration of medication rendered by a non-practitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

**"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

**"Neglect"** means:

- (1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or
- (2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**"Physical restraint"** means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

**"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

**"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical anti-psychotics, antidepressants, stimulants, sedatives/hypnotics, and anti-mania and anti-anxiety drugs.

**"Qualified professional"** means a person with at least three years' experience working with individuals with developmental disabilities.

**"Residential service"** means services provided to clients by a service provider.

**"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

**"Risk assessment"** means an assessment done by a qualified professional to determine the likelihood that a community protection program client will offend or re-offend.

**"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs.

**"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

**"Supported living"** means residential services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

**"Treatment team"** means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

**"Vulnerable adult"** includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility; or
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from an individual provider.

**"Willful"** means the deliberate, or non-accidental, action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause a negative outcome, harm, injury, pain, and anguish.

**"Written individual plan"** means a plan developed for clients in the community protection program that includes:

- (1) An assessment of the client's emotional and behavioral issues as related to community protection risks;
- (2) Specific intervention strategies and techniques related to community protection risks;
- (3) Specific restrictions and measures, including security precautions, both in-home and out-of-home; and
- (4) Signatures of the client's case manager and the client.

## CERTIFICATION AND MONITORING

### NEW SECTION

**WAC 388-101-3010 Certified community residential services and supports.** In order for a person or entity to deliver client instruction and support services under this chapter the person or entity must:

- (1) Be certified by the department; and

- (2) Be granted a contract by the department.

#### NEW SECTION

**WAC 388-101-3020 Compliance.** The service provider must be in compliance with:

(1) All the requirements of this chapter. Except that, the licensing requirements for adult family homes and boarding homes supersede this chapter if the requirements under respective chapters 388-76 and 388-78A WAC conflict with this chapter;

(2) The laws governing this chapter, including chapter 71A.12 and 71A.22 RCW;

(3) The requirements of chapter 74.34 RCW;

(4) The department's residential services contract. Except that, the requirements of this chapter supersede any conflicting requirements with the contract, or appendices to the contract; and

(5) Other relevant federal, state and local laws, requirements, and ordinances.

#### NEW SECTION

**WAC 388-101-3030 Application required.** (1) A person or entity must complete an application before the department will consider initial certification; and

(2) The service provider must complete an application before the department will consider a request for change of ownership as detailed in WAC 388-101-3060.

#### NEW SECTION

**WAC 388-101-3040 Residential services contract.** (1) The service provider may request a department residential services contract after approval for initial certification or for change of ownership.

(2) The service provider must have a separate contract for each region where they receive referrals to serve clients.

(3) The service provider's residential services contract will be terminated by the department upon termination of certification.

#### NEW SECTION

**WAC 388-101-3050 Application for initial certification.** (1) To apply for initial certification an applicant must submit to the department:

(a) A letter of intent that includes:

(i) Contact information;

(ii) Geographical area of service; and

(iii) Type of service provided, including group home, supported living, community protection, or group training home.

(b) A completed and signed application on forms designated by the department;

(c) All attachments specified in the application and any other information the department may request including but not limited to:

(i) Administrator resumes;

(ii) Statements of financial stability;

(iii) Professional references;

(iv) Relevant experiences and qualifications of the individual or agency; and

(v) Assurances the applicant will not discriminate against any client or employee.

(d) A copy of the license if applying for certification as a group home;

(e) The name of the administrator of the program; and

(f) Department criminal history background check on forms designated by the department for the individual or individuals designated to serve as administrator of the proposed program.

(2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.

(3) The department will only process a completed application.

(4) Each person named in the application for initial certification is considered separately and jointly by the department.

(5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.

(6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

#### NEW SECTION

**WAC 388-101-3060 Change of ownership.** (1) To apply for a change of ownership, an applicant must submit an application and the required reports and documents to the department when there is a change of:

(a) The business entity ownership; or

(b) The form of legal organization.

(2) The service provider applying for a change of ownership may be required to provide any or all items listed in WAC 388-101-3050.

(3) If the applicant is not a current service provider, the applicant must apply for initial certification.

#### NEW SECTION

**WAC 388-101-3070 Notice for change of ownership.** The current service provider must notify:

(1) The department in writing sixty days before a change of ownership; and

(2) Clients or their legal representatives in writing thirty days before a change of ownership.

#### NEW SECTION

**WAC 388-101-3080 The department may deny—Application.** The department may deny the application for initial certification or change of ownership if any person named in the application:

(1) Has shown a lack of understanding, ability or emotional stability to meet the identified needs of vulnerable adults;

(2) Had a department contract or certification withdrawn or denied by the department, or has been subjected to enforcement actions;



(3) Had a contract, certification, or license from another state withdrawn or denied;

(4) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;

(5) Has relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;

(6) Refused to permit authorized department representatives to interview clients or to have access to client records;

(7) Has been convicted of a drug related conviction within the past five years without evidence of rehabilitation; or

(8) Has been convicted of an alcohol related conviction within the past five years without evidence of rehabilitation.

#### NEW SECTION

**WAC 388-101-3090 The department must deny—Application.** The department must deny an application for initial certification or change of ownership if any person named in the application was:

(1) Convicted of a crime against children or other persons or crimes relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;

(2) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or financially exploited a vulnerable adult;

(3) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor;

(4) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor;

(5) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or have abused, neglected, abandoned, or financially exploited any vulnerable adult as defined under chapter 74.34 RCW; or

(6) The subject of a stipulated finding of fact, conclusion of law, an agreed order, finding of fact, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW.

#### NEW SECTION

**WAC 388-101-3100 Certification—Initial.** (1) The department may approve the individual or entity for initial certification when the individual or entity complies with the requirements of this chapter. The department may:

(a) Grant initial certification for up to one hundred and eighty days of the effective date of the residential services contract; and

(b) Extend initial certification for an additional period up to one hundred and eighty days.

(2) If an applicant does not receive a residential services contract, initial certification will be valid for up to one year.

#### NEW SECTION

**WAC 388-101-3110 Certification—Regular.** (1) The department may approve the service provider for regular certification when the service provider complies with the requirements of this chapter and the residential services contract. The department may:

(a) Grant certification to a service provider for up to two years; and

(b) Extend regular certification for an additional period up to one hundred and eighty days.

(2) If a service provider does not comply with the certification requirements, the department may provisionally certify or decertify a service provider.

#### NEW SECTION

**WAC 388-101-3120 Certification—Other.** If a service provider does not comply with the certification requirements, the department may provisionally certify or decertify a service provider.

#### NEW SECTION

**WAC 388-101-3130 Certification evaluation.** (1) The department may conduct an on-site certification evaluation of each service provider at any time, but at least once every two years.

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all records and information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

#### NEW SECTION

**WAC 388-101-3140 Complaint investigation.** The department may conduct unannounced complaint investigations to determine the service provider's compliance with this chapter, the residential services contract, and applicable laws and requirements.

#### NEW SECTION

**WAC 388-101-3150 Department access to program.** The service provider must:

(1) Allow any state or federal department or agency to conduct audits, evaluations, or complaint investigations related to this program or to clients served in this program;

(2) Allow department representatives to review a client's records and activities at any time to see if the service provider continues to address the clients' needs for instruction and support activities;

(3) Allow the department representatives' access to clients, the client's legal representative and family members; and

(4) Cooperate with department representatives in the performance of official duties.

#### NEW SECTION

**WAC 388-101-3160 Plan of correction.** The service provider must:

(1) Submit a signed plan of correction to the department according to established department processes and timelines; and

(2) Include in the plan of correction:

(a) What the service provider did or will do to correct each deficiency;

(b) How the service provider will prevent future problems of this type;

(c) Who will be responsible for monitoring the corrections to ensure the problems do not recur; and

(d) When lasting correction will be achieved.

#### NEW SECTION

**WAC 388-101-3170 Group training home.** After the effective date of this chapter a person or entity desiring to become a group training home must:

(1) Complete an application on forms and attachments designated by the department; and

(2) Currently be:

(a) Certified as a community residential services and support provider;

(b) Licensed as an adult family home under chapter 70.128 RCW; and

(c) A nonprofit business in accordance with state and federal law.

#### NEW SECTION

**WAC 388-101-3180 Department approval of group training home status.** The department will consider, at a minimum, the following when determining whether to approve or deny an application for group training home status:

(1) The needs of the program;

(2) Available funding;

(3) The information received from the applicant;

(4) The certification history of the applicant;

(5) The licensing history of the applicant; and

(6) The capacity of the home.

### ADMINISTRATIVE REQUIREMENTS

#### NEW SECTION

**WAC 388-101-3190 Service provider responsibilities.** (1) Service providers must meet the requirements of:

(a) This chapter;

(b) Each contract and statement of work entered into with the department;

(c) Each client's individual support plan when the individual support plan identifies the service provider as responsible; and

(d) Each client's individual instruction and support plan.

(2) The service provider must:

(a) Have a designated administrator and notify the department when there is a change in administrator;

(b) Ensure that clients have immediate access to staff, or the means to contact staff, at all times;

(c) Provide adequate staff within contracted hours to administer the program and meet the needs of clients;

(d) Not routinely involve clients in the unpaid instruction and support of other clients;

(e) Not involve clients receiving crisis diversion services in the instruction and support of other clients; and

(f) Retain all records and other material related to the residential services contract for six years after expiration of the contract.

#### NEW SECTION

**WAC 388-101-3200 Staffing requirements.** The service provider must ensure each staff meets the following minimum requirements:

(1) Have a high school diploma or GED equivalent, unless the employees were hired before September 1, 1991;

(2) Be eighteen years of age or older when employed as a direct care staff, or twenty-one years of age or older when employed as an administrator;

(3) Have a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and

(4) Passed the department criminal background check and have no criminal convictions listed in RCW 43.43.830 or 43.43.842 and no state or federal findings of abandonment, abuse, neglect or financial exploitation.

#### NEW SECTION

**WAC 388-101-3210 Administrative documents.** The service provider must prepare and maintain written documents as follows:

(1) A mission statement;

(2) A program description;

(3) An organizational chart and description showing all supervisory relationships;

(4) Description of staff roles and responsibilities, including the person designated to act in the absence of the administrator; and

(5) Staffing schedules.

#### NEW SECTION

**WAC 388-101-3220 Administrator responsibilities.** The service provider must ensure that the administrator delivers services to clients consistent with this chapter, and the department's residential services contract. This includes but is not limited to:

(1) Overseeing all aspects of staffing, such as recruitment, staff training, and performance reviews;

(2) Developing and maintaining policies and procedures that give staff direction to provide appropriate services and

support as required by this chapter and the department contract; and

(3) Maintaining and securely storing client, personnel, and financial records.

#### NEW SECTION

**WAC 388-101-3230 Group homes.** A service provider who is a licensed adult family home or boarding home must:

(1) Provide care and services in accordance with this chapter and with licensing requirements under chapters 388-76 and 388-78A WAC respectively;

(2) Comply with the home's licensing requirements if there is a conflict with requirements in this chapter; and

(3) Comply with this chapter if the requirement is over and above the home's licensing requirements.

#### NEW SECTION

**WAC 388-101-3240 Policies and procedures.** (1) The service provider must develop, implement, and train staff on policies and procedures to address what staff must do:

(a) Related to client rights, including a client's right to file a complaint or suggestion without interference;

(b) Related to soliciting client input and feedback on instruction and support received;

(c) Related to reporting suspected abuse, neglect, financial exploitation, or abandonment;

(d) To protect clients when there have been allegations of abuse, neglect, financial exploitation, or abandonment;

(e) In emergent situations that may pose a danger or risk to the client or others, such as in the event of death or serious injury to a client;

(f) In responding to missing persons and client emergencies;

(g) Related to emergency response plans for natural or other disasters;

(h) When accessing medical, mental health, and law enforcement resources for clients;

(i) Related to notifying a client's legal representative, and/or relatives in case of emergency;

(j) When receiving and responding to client grievances; and

(k) To respond appropriately to aggressive and assaultive clients.

(2) The service provider must develop, implement, and train staff on policies and procedures in all aspects of the medication support they provide, including but not limited to:

(a) Supervision;

(b) Client refusal;

(c) Services related to medications and treatments provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;

(d) The monitoring of a client who self-administers their own medications;

(e) Medication assistance for clients needing this support; and

(f) What the service provider will do in the event they become aware that a client is no longer safe to take their own medications.

(3) The service provider must maintain current written policies and procedures and make them available to all staff; and to clients and legal representatives upon request.

#### NEW SECTION

**WAC 388-101-3250 Criminal history background checks.** (1) The service provider must obtain criminal history background checks from the department for all administrators, employees, volunteers, and subcontractors.

(2) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives successful results from the criminal history background check from the department:

(a) Administrators;

(b) Employees;

(c) Volunteers or students; and

(d) Subcontractors.

(3) Service providers or applicants who have lived in Washington state less than three years or who are otherwise required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law when:

(a) The applicant or service provider is not disqualified based on the initial result of the background check from the department; and

(b) A fingerprint-based background check is pending.

(4) The service provider must notify the person that he or she may request a copy of the background check result within ten days of receiving the result.

(5) The service provider must renew at least every thirty-six months and keep current department background checks for each administrator, employee, volunteer or subcontractor of a service provider.

(6) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(7) Service providers must follow the requirements of RCW 43.43.830 through 43.43.842 and RCW 74.15.030.

#### NEW SECTION

**WAC 388-101-3260 Staff training.** The service provider must:

(1) Provide and document required training to staff;

(2) Within the first six months, ensure that staff receives a minimum of thirty-two total hours of training that meets the training requirements of this chapter;

(3) Provide staff training sooner if required by the client's identified needs; and

(4) Meet state and federal laws regarding training; such as, bloodborne pathogens training referenced in WAC 296-823-120.

#### NEW SECTION

**WAC 388-101-3270 Staff training before working alone with clients.** The service provider must train staff in the following before the employee works alone with clients:

(1) Current individual instruction and support plans of each client with whom the employee works;

- (2) Emergency procedures for clients;
- (3) The reporting requirements for abuse and neglect under chapter 74.34 RCW; and
- (4) Client confidentiality.

NEW SECTION

**WAC 388-101-3280 Staff training within four weeks of employment.** The service provider must provide training within the first four weeks of employing a staff person to include:

- (1) The service provider's mission statement;
- (2) Policies and procedures; and
- (3) On-the-job training.

NEW SECTION

**WAC 388-101-3290 Staff training within six months of employment.** The service provider must provide training within the first six months of employing a staff person, to include:

- (1) First aid and CPR;
- (2) Bloodborne pathogens with HIV/AIDS information;
- (3) Client services;
- (4) Residential guidelines; and
- (5) Positive behavior support.

NEW SECTION

**WAC 388-101-3300 Staff training to be current.** The service provider must ensure that each employee keeps their first aid training, CPR certification, and bloodborne pathogens training current.

NEW SECTION

**WAC 388-101-3310 Approval of staff-coverage schedules.** (1) The service provider must obtain division of developmental disabilities approval of schedules to provide twenty-four hour support, at the following times:

- (a) Prior to certification review;
  - (b) When household configuration changes affect staff coverage; or
  - (c) When additional staffing is requested or needed by the client.
- (2) The service provider must retain copies of the staff coverage schedules for a minimum of three months.

**CLIENT RIGHTS AND TREATMENT**NEW SECTION

**WAC 388-101-3320 Client rights.** (1) Clients have the same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution, federal and state law unless limited through legal processes.

- (2) Service providers must promote and protect all of the following client rights, including but not limited to:
- (a) The right to be free from discrimination;
  - (b) The right to be reasonably accommodated in accordance with the Americans with Disabilities Act;

(c) The right to privacy, including the right to receive and send private mail and telephone calls;

(d) The right to participate in an appropriate program of publicly supported education;

(e) The right to be free from harm, including unnecessary physical restraint, isolation, excessive medication, abuse, neglect, abandonment, and financial exploitation; and

(f) The right to refuse health services, medications, restraints, and restrictions.

(3) For group homes that have a boarding home or adult family home license, refer to chapter 388-78A or 388-76 WAC respectively for additional rights.

NEW SECTION

**WAC 388-101-3330 Treatment of clients.** Service providers must treat clients with dignity and consideration, respecting the client's civil and human rights at all times.

**CLIENT SERVICES**NEW SECTION

**WAC 388-101-3340 Subcontracting.** The service provider must not subcontract any service without prior written approval from the department. The service provider must ensure that all required terms, conditions, assurances and certifications are included in all subcontracts.

NEW SECTION

**WAC 388-101-3350 Residential guidelines.** The service provider must use the following department residential guidelines when providing services to each client:

- (1) Health and safety;
- (2) Personal power and choice;
- (3) Competence and self-reliance;
- (4) Positive recognition by self and others;
- (5) Positive relationships; and
- (6) Integration in the physical and social life of the community.

NEW SECTION

**WAC 388-101-3360 Client services.** Service providers must provide each client instruction and/or support to the degree the individual support plan identifies the service provider as responsible. Instruction and/or support to the client may include but are not limited to the following categories:

- (1) Home living activities;
- (2) Community living activities;
- (3) Life-long learning activities;
- (4) Health and safety activities;
- (5) Social activities;
- (6) Employment;
- (7) Protection and advocacy activities;
- (8) Exceptional medical support needs; and
- (9) Exceptional behavioral support needs.

NEW SECTION**WAC 388-101-3370 Client health services support.**

The service provider must:

- (1) Provide instruction and/or support as identified in the individual support plan to assist the client in:
  - (a) Accessing health, mental health, and dental services; and
  - (b) Medication management, administration, and assistance.
- (2) Maintain health records;
- (3) Assist the client in arranging appointments with health professionals;
- (4) Monitor medical treatment prescribed by health professionals;
- (5) Communicate directly with health professionals when needed; and
- (6) Ensure that the client receives an annual physical and dental examination unless the appropriate medical professional gives a written exception.

NEW SECTION

**WAC 388-101-3375 Nurse delegation.** (1) Service provider staff must not perform a delegated nursing task for the client before the delegating nurse has obtained consent from the client or person authorized to give consent.

- (2) The service provider must not allow an employee to perform any nursing task that violates applicable statutes and rules, including:
  - (a) Chapter 18.79 RCW, Nursing care;
  - (b) Chapter 18.88A RCW, Nursing assistants;
  - (c) Chapter 246-840 WAC, Practical and registered nursing;
  - (d) Chapter 246-841 WAC, Nursing assistants; and
  - (e) Chapter 246-888 WAC, Medication assistance.

NEW SECTION

**WAC 388-101-3380 Client transportation.** (1) The service provider must meet the client's transportation needs by:

- (a) Not charging the client for transportation costs except as specified in the client's individual support plan;
  - (b) Using the client's Medicaid coupons for covered transportation, if available; and
  - (c) Ensuring that other transportation is provided as specified in the client's individual support plan.
- (2) The service provider must provide transportation or ensure that clients have a way to get to and from:
- (a) Emergency medical care;
  - (b) Medical appointments; and
  - (c) Therapies.
- (3) As specified in the client's individual support plan, the service provider must provide necessary assistance with transportation to and from:
- (a) School or other publicly funded services;
  - (b) Work;
  - (c) Leisure or recreation activities; and
  - (d) Client-requested activities.

(4) A vehicle that the service provider uses to transport clients must be insured as required by chapters 46.29 and 46.30 RCW.

(5) The service provider must maintain a business automobile insurance policy on service provider owned vehicles used to transport clients.

(6) The service provider must maintain non-owned vehicle insurance coverage for vehicles not owned by the service provider but used to transport clients.

(7) Service providers, employees, subcontractors, and volunteers who transport clients must have a valid driver's license as required by chapter 46.20 RCW.

NEW SECTION

**WAC 388-101-3390 Physical and safety requirements.** (1) Crisis diversion support service providers are exempt from the requirements in this section.

(2) The service provider must ensure that the following home safety requirements are met for each client unless otherwise specified in the client's individual support plan:

- (a) A safe and healthy environment;
  - (b) Accessible telephone equipment and a list of emergency contact numbers;
  - (c) An evacuation plan developed and practiced with the client;
  - (d) Unblocked door and window for emergency exit;
  - (e) A safe storage area for flammable and combustible materials;
  - (f) An operating smoke detector, with a light-alarm for clients with hearing impairments;
  - (g) An accessible flashlight or other safe accessible light source in working condition; and
  - (h) Basic first-aid supplies.
- (3) The service provider must assist clients in regulating household water temperature unless otherwise specified in the client's individual support plan as follows:

- (a) Maintain water temperature in the household no higher than one hundred and twenty degrees Fahrenheit;
  - (b) Check water temperature when the client first moves into the household and at least once every three months from then on; and
  - (c) Regulate water temperature for clients who receive twenty-four hour support, and for other clients as specified in the individual support plan.
- (4) The service provider must document and keep records that indicate that physical safety requirements are met for each client.
- (5) A client may independently document these requirements are met when the client's individual support plan specifies this level of client involvement.

NEW SECTION

**WAC 388-101-3400 Services to nonclients.** Before providing services to nonclients in the same household with clients, the service provider must:

- (1) Provide the department with a written description of the household composition;
- (2) Obtain written approval from the division of developmental disabilities; and

(3) Obtain written consent from each client in the household or the client's legal representative if the client is unable to consent.

#### NEW SECTION

**WAC 388-101-3410 Community protection clients and other clients in the same household.** Before allowing a community protection program client to live in the same household with supported living clients who are not in the community protection program, the service provider must:

- (1) Provide the department with a written description of the household composition;
- (2) Participate with the treatment team during the household composition review;
- (3) Obtain written approval from the division of developmental disabilities; and
- (4) Obtain written consent from each client in the household or the client's legal representative if the client is unable to consent.

#### NEW SECTION

**WAC 388-101-3420 Client refusal to participate in services.** (1) The service provider must notify the case manager if the client's health and safety is adversely affected by the client's refusal to participate in services.

- (2) Service providers must document each client's refusal to participate in:
  - (a) Physical and safety requirements, as outlined in WAC 388-101-3390; and
  - (b) Client health services support under WAC 388-101-3370.
- (3) Service providers must document the following:
  - (a) A description of events relating to the client's refusal to participate in these services;
  - (b) That the client was informed of the benefits of these services and the possible risks of refusal;
  - (c) A description of the service provider's efforts to give or acquire the services for the client; and
  - (d) Any health or safety concerns that the refusal may pose.
- (4) The service provider must:
  - (a) Review this documentation with the client or the client's legal representative at least every six months; and
  - (b) Request that the client or client's legal representative sign and date the document after reviewing it.

#### NEW SECTION

**WAC 388-101-3430 Changes in client service needs—Nonemergent.** The service provider must notify the department:

- (1) When a client's service needs change and the individual support plan no longer addresses the client's needs; and
- (2) May request in writing, assistance from the department's case manager in setting up an assessment meeting.

#### NEW SECTION

**WAC 388-101-3440 Changes in client service needs—Emergent.** (1) The service provider must promptly notify the department to ask for emergency assistance when the client's needs change and the actions or continued presence of a client endangers the health, safety and/or personal property of other clients, the client, those working with the client, or other public citizens; and

(2) If further assistance is needed, the service provider must confirm in writing to the client's case manager on the first working day after initiating a verbal request for such assistance:

- (a) The nature of the emergency; and
- (b) The need for immediate assistance and the specific type of assistance needed.

#### NEW SECTION

**WAC 388-101-3450 Service provider refusal to serve a client.** Before terminating services to the client, the service provider must:

- (1) Notify the department in writing ten working days before termination of services and include:
  - (a) Why the provider cannot meet the client's needs; and
  - (b) How the refusal to serve the client would be in the best interest of the client or other clients.
- (2) Notify the client and the client's legal representative in writing ten working days before terminating services; and
- (3) Notify the department immediately if the situation is urgent and the client or other clients are at risk.

#### **INDIVIDUAL INSTRUCTION AND SUPPORT PLAN**

#### NEW SECTION

**WAC 388-101-3460 Individual support plan.** The service provider must use the client's current individual support plan in the development of the individual instruction and support plan.

#### NEW SECTION

**WAC 388-101-3470 Development of the individual instruction and support plan.** (1) The service provider must develop and implement an individual instruction and support plan for each client that incorporates the department's residential guidelines in developing instruction and support activities.

(2) In developing the individual instruction and support plan, the service provider must:

- (a) Work with the client and select goals based on the individual support plan that will be worked on during the implementation of the individual instruction and support plan for the upcoming year;
- (b) Identify how the instruction and/or support activities will be provided to meet the assessed needs of the client as described in the individual support plan;
- (c) Ensure that the individual instruction and support plan contains or refers to other applicable support and/or service information; and

(d) Include the participation and agreement of the client and other individuals the client wants included.

(3) The service provider must send a copy of the individual instruction and support plan goals together with a list of applicable support and service information and where the information is located to the case manager for review.

#### NEW SECTION

**WAC 388-101-3480 Documentation of the individual instruction and support plan.** For each client the service provider must:

(1) Develop and keep a written record of the individual instruction and support plan that includes the elements required in WAC 388-101-3470;

(2) Include a section or page in the individual instruction and support plan that provides or references all applicable support or service information pertaining to the client;

(3) Review and update the plan to reflect changes in the assessed needs as described in the individual support plan;

(4) Sign and date the plan's documents; and

(5) Document the client's agreement with the plan as well as the client's legal representative if applicable.

#### NEW SECTION

**WAC 388-101-3490 Implementation of the individual instruction and support plan.** The service provider must:

(1) Oversee the progress made on each client's individual instruction and support plan;

(2) Coordinate with other staff, and other providers serving the client, and other interested persons as needed, in implementing the individual instruction and/or support plan; and

(3) Revise and update the plan as the client's assessed needs change.

#### NEW SECTION

**WAC 388-101-3500 Accessibility of the individual instruction and support plan.** The service provider must make the individual instruction and support plan accessible at all times to:

(1) Staff to provide direction on what they are to do to instruct and/or support the client;

(2) The client receiving service;

(3) The client's legal representative; and

(4) Representatives of the department.

#### NEW SECTION

**WAC 388-101-3510 Ongoing updating of the individual instruction and support plan.** The service provider must:

(1) Review and revise the individual instruction and support plan as goals are achieved or as client assessed needs change in order to reflect the client's current needs, goals, and preferences:

(a) At least semi-annually; and

(b) At any time requested by the client or the client's legal representative.

(2) Send an updated copy of the instruction and support goals of the individual instruction and support plan and the list of applicable support and service information and where the information is located to the case manager for review.

### CLIENT FINANCES

#### NEW SECTION

**WAC 388-101-3520 Client related funds.** If the service provider does not manage the client's funds and receives funds for the client from any source, the service provider must be able to show that all the funds received are:

(1) Given to the client or the client's legal representative;

(2) Deposited to the client's account; or

(3) Used only for the client.

#### NEW SECTION

**WAC 388-101-3530 Individual financial plan.** (1) The service provider must develop and implement an individual financial plan with client participation when the client's individual support plan:

(a) Identifies that the client needs support to manage funds; and

(b) Designates the service provider as responsible for that support; or

(c) Indicates the service provider manages any portion of the client's funds.

(2) The service provider must obtain signatures from the client and the client's legal representative on the individual financial plan.

(3) The service provider must include the following in the client's individual financial plan:

(a) Client funds and income managed by the service provider;

(b) Client funds and income managed by the client and the client's legal representative;

(c) The type of accounts containing client funds;

(d) A description of how the client's funds will be spent during a typical month;

(e) Money management instruction or support provided to the client; and

(f) If applicable, asset management including such things as personal property, burial plan, retirement funds, stock, and vehicles.

(4) The service provider must review the individual financial plan with the client at least every twelve months.

(5) The service provider must send a copy of each client's individual financial plan to:

(a) The client's legal representative; and

(b) The client's case manager upon request.

#### NEW SECTION

**WAC 388-101-3540 Managing client funds.** (1) Before managing a client's funds the service provider must either:

(a) Obtain written consent from the client or the client's legal representative; or

(b) Become the representative payee.

(2) For any client funds managed by the service provider, the service provider must:

(a) Separately track each client's money, even when several clients reside together;

(b) Maintain a current running balance of each client account;

(c) Make deposits to the client's bank account within one week of receiving the client's money;

(d) Prevent the client's bank account from being overdrawn;

(e) Ensure that client cash funds do not exceed seventy-five dollars per client unless specified differently in the individual financial plan; and

(f) Retain receipts for each purchase over twenty-five dollars.

(3) Social Security Administration requirements for managing the client's social security income take precedence over these rules if:

(a) The service provider is the client's representative payee; and

(b) The Social Security Administration requirement conflicts with these rules.

(4) When the service provider manages the client's funds and receives a check made out to the client, the service provider must:

(a) Get the client's signature and designation "for deposit only,"; or

(b) Get the client's "x" mark in the presence of a witness and cosign the check with the designation "for deposit only,"; and

(c) Deposit the check in the client's bank account as required under subsection (2)(c) of this section.

(5) If a check for the client is made out to a payee other than the client, the service provider must ask the payee to sign the check.

(6) The service provider must not ask the client to sign a blank check.

(7) The service provider may only assist the client to make purchases by check when the client signs the check at the time of the purchase unless:

(a) Otherwise specified in the client's individual financial plan; or

(b) The service provider is the client's representative payee.

(8) The service provider must document in the client's record the name of each staff that may assist the client with financial transactions.

#### NEW SECTION

**WAC 388-101-3545 Using client funds for health services.** The service provider must document all denials for client health services from the department's medical assistance administration, and medical insurance companies. The service provider:

(1) Must notify the case manager of the denial in writing; and

(2) May use client funds for the client's health services if no other funding is available.

#### NEW SECTION

**WAC 388-101-3550 Reconciling and verifying client accounts.** (1) For any client funds managed by the service provider, the service provider must:

(a) Reconcile the client's bank accounts to the client's bank statements each month;

(b) Reconcile the client's cash account each month; and

(c) Verify the accuracy of the reconciliation.

(2) The service provider must not allow the same staff person to do both the verification and reconciliation of the client's account.

(3) The service provider must ensure that the verification or reconciliation is done by a staff person who did not:

(a) Make financial transactions on the client's behalf; or

(b) Assist the client with financial transactions.

#### NEW SECTION

**WAC 388-101-3560 Combining service provider and client funds.** The service provider must not combine client funds with any service provider funds, such as agency operating funds.

#### NEW SECTION

**WAC 388-101-3570 Client bankbooks and bankcards.** (1) For clients who manage their own funds, the service provider must document in the client's record when the client asks the provider to hold the client's bankbooks and bankcards.

(2) When the service provider holds the client's bankcards or bankbooks as requested by the client:

(a) It is not assumed that the service provider is managing the client's funds; and

(b) The client must continue to have access to his or her own funds.

#### NEW SECTION

**WAC 388-101-3580 Client financial records.** (1) For client funds that the service provider manages, the service provider must retain documentation including documentation for bank and cash accounts.

(2) The service provider must also keep the following documentation for client financial transactions:

(a) Monthly bank statements and reconciliations;

(b) Checkbook registers and bankbooks;

(c) Deposit receipts;

(d) Receipts for purchases over twenty-five dollars;

(e) A ledger showing deposits, withdrawals, and interest payments to each client; and

(f) A control journal for trust accounts.

(3) The service provider must keep the following documentation for cash and debit transactions:

(a) A detailed ledger signed by the staff who withdrew any of the client's money;



(b) A detailed accounting of the funds received on behalf of the client including:

- (i) Cash received from writing checks over the purchase amount; and
- (ii) A list of where the money was spent.
- (c) Receipts for purchases over twenty-five dollars when service provider staff withdrew the money.

#### NEW SECTION

##### **WAC 388-101-3590 Transferring client funds.** (1)

When the service provider manages a client's funds and the client changes service providers, the previous service provider must transfer all of the client's funds, except funds necessary to pay unpaid bills, to the client or designee as soon as possible but no longer than thirty days.

(2) When transferring funds, the previous provider must:

- (a) Have an agreement with the client regarding the amount of money to be withheld to pay bills;
- (b) Inform the client's case manager about any agreement in subsection (2)(a) of this section;
- (c) Give the client and the client's legal representative a written accounting of all known client funds;
- (d) When applicable, give the new service provider a written accounting of all transferred client funds;
- (e) Obtain a written receipt from the client and legal representative for all transferred funds; and
- (f) When applicable, obtain the new service provider's written receipt for the transferred funds.

(3) When the client moves to another living arrangement without supported living services or the client's whereabouts are unknown, the service provider must transfer the client's funds within one hundred eighty days to:

- (a) The client's legal representative;
- (b) The department; or
- (c) The requesting governmental entity.

(4) When the client dies, the service provider must transfer the client's funds within ninety days to:

- (a) The client's legal representative;
- (b) The requesting governmental entity; or
- (c) The department if the client does not have a legal heir.

(5) Social Security Administration requirements for managing the client's social security income take precedence over these rules for transferring client funds if:

- (a) The service provider is the client's representative payee; and
- (b) The Social Security Administration requirement conflicts with these rules.

#### NEW SECTION

**WAC 388-101-3600 Client loans.** (1) The service provider may loan funds to a client from the service provider's funds and collect the debt from the client in installments.

(2) The client's service provider must not:

- (a) Charge the client interest for any money loaned; or
- (b) Borrow funds from the client.

(3) The provider must keep the following loan documentation for each loan:

(a) A loan agreement signed by the client or the client's legal representative;

- (b) Amount of the loan;
- (c) Payments on the loan balance; and
- (d) The current balance owed.

#### NEW SECTION

**WAC 388-101-3610 Client reimbursement.** The service provider must pay the client the total amount involved when:

- (1) The service provider or staff has stolen, misplaced, or mismanaged client funds; or
- (2) Service charges are incurred on a trust account that the service provider manages for the client.

#### NEW SECTION

**WAC 388-101-3620 Client payment.** When the client performs work for the service provider, the service provider must pay the client:

- (1) At least the current minimum wage; and
- (2) According to state and federal requirements.

### CLIENT MEDICATIONS

#### NEW SECTION

##### **WAC 388-101-3630 Medication services—General.**

(1) If the service provider is involved in assisting any client with medications, as identified in the client's individual support plan, the service provider must:

- (a) Have systems in place to ensure that medications are given as ordered and in a manner that safeguards the client's health and safety;
- (b) Ensure that each client receives their medication as prescribed, except as provided for in the medication refusal section or in the medication assistance section regarding altering medication; and
- (c) Have a legible prescription label completed by a licensed pharmacy before providing medication assistance or medication administration to a client for prescribed medications.

(2) Group homes licensed as a boarding home or adult family home must meet the medication management requirements of chapter 388-78A or 388-76 WAC. For any difference in requirements the boarding home or adult family home medication rules take precedence over the medication rules of this chapter.

#### NEW SECTION

##### **WAC 388-101-3640 Medication—Types of support.**

The service provider must provide medication support as specified in the client's individual support plan. Types of client support include:

- (1) Self-administration of medication;
- (2) Medication assistance;
- (3) Nurse delegated medication administration; and
- (4) Medication administration by a practitioner.

NEW SECTION

**WAC 388-101-3650 Medication—Self-administration.** If a client is assessed as independent in self-administration of medications the service provider must inform the client's case manager if they have a reason to suspect that the client is no longer safe to self-administer medications.

NEW SECTION

**WAC 388-101-3660 Medication assistance.** If the client is assessed as needing assistance with medication, the service provider may assist the client to take medications in any of the following ways:

- (1) Communicating the prescriber's order to the client in such a manner that the client self-administers his/her medication properly;
- (2) Reminding or coaching the client when it is time to take a medication;
- (3) Opening the client's medication container;
- (4) Handing the client the medication container;
- (5) Placing the medication in the client's hand;
- (6) Transferring medication from one container to another for the purpose of an individual dose (e.g., pouring a liquid medication from the container to a calibrated spoon or medication cup or using adaptive devices);
- (7) Altering a medication by crushing or mixing:
  - (a) Only if the client is aware that the medication is being altered or added to food or beverage; and
  - (b) A pharmacist or other qualified practitioner has determined it is safe to alter medication; and
  - (c) It is documented on the prescription container or in the client's record.
- (8) Guiding or assisting the client to apply or instill skin, nose, eye and ear preparations. Hand-over-hand administration is not allowed; and
- (9) For group homes that have a boarding home or adult family home license, refer to chapter 388-78A or 388-76 WAC for additional tasks that may be allowed.

NEW SECTION

**WAC 388-101-3670 Medication administration—Nurse delegation.** If a client is assessed as requiring medication administration and the service provider is not a practitioner, the service provider must ensure the assistance is provided by a licensed health care professional or under nurse delegation as per chapter 246-840 WAC and chapter 18.79 RCW.

NEW SECTION

- WAC 388-101-3680 Medication administration.** (1) If a service provider is a licensed health care professional, the licensed professional may administer the client's medication.
- (2) Service providers may only administer medication under the order of a physician or a health care professional with prescriptive authority.

NEW SECTION

**WAC 388-101-3690 Medication refusal.** (1) When a client who is receiving medication support from the service provider chooses to not take his or her medications, the service provider must:

- (a) Respect the client's right to choose not to take the medication(s); and
  - (b) Document the time, date and medication the client did not take.
- (2) The service provider must take the appropriate action, including notifying the prescriber or primary care practitioner, when the client chooses to not take his or her medications and the client refusal could cause harm to the client or others.

NEW SECTION

**WAC 388-101-3700 Storage of medications.** (1) The service provider must keep a client's medications so they are not readily available to other clients.

- (2) The service provider must store medications:
- (a) Under proper conditions for sanitation, temperature, moisture and ventilation, and separate from food or toxic chemicals; and
  - (b) In the original medication containers with pharmacist-prepared or manufacturer's label, or in medication organizers which are clearly labeled with the:
    - (i) Name of the client for whom the medication is prescribed;
    - (ii) Name of the medications; and
    - (iii) Dosage and frequency.
- (3) Group homes must:
- (a) Keep all medications in locked storage; and
  - (b) Use medication organizers only when filled by a pharmacist.

NEW SECTION

**WAC 388-101-3710 Medication organizers.** (1) Service providers may allow medication organizers maintained by the individual when the organizers are filled by:

- (a) The client;
  - (b) A licensed pharmacist;
  - (c) An RN; or
  - (d) The client's legal representative or a family member.
- (2) Service providers must assure that the medication organizers are labeled.
- (3) The client, a pharmacist, an RN, or the client's legal representative or family member may label the medication organizer.
- (4) When there is a change in medications by the prescriber, the individual filling the medication organizers must replace labels with required updated information immediately.

NEW SECTION

**WAC 388-101-3720 Medications—Documentation.** The service provider must maintain a written record of all

medications administered to, assisted with, monitored, or refused by the client.

#### NEW SECTION

**WAC 388-101-3730 Disposal of medications.** (1) The service provider or his/her designee must properly dispose of all medications that are discontinued, out of date, or superseded by another.

(2) When disposing client medications the service provider must list the:

- (a) Medication;
- (b) Amount; and
- (c) Date that it was disposed.

(3) Two people, one of whom may be the client, must verify the disposal by signature.

(4) For group homes that have a boarding home or adult family home license, refer to chapters 388-78A or 388-76 WAC for medication disposal requirements.

### PSYCHOACTIVE MEDICATIONS

#### NEW SECTION

**WAC 388-101-3740 Psychoactive medication assessment.** If a client displays symptoms of mental illness and/or persistent challenging behavior, the service provider must:

- (1) Refer the client for a professional assessment;
- (2) Prior to the referral, prepare a psychiatric referral summary, including the frequency and severity of the symptoms or behaviors, and take or send this document to the treatment professional conducting the assessment;
- (3) Respect the client's preference to visit the treatment professional independently; and
- (4) If drugs are prescribed, have the prescribing professional assess the client at least annually to review the continued need for the medication(s) and possible dosage reduction.

#### NEW SECTION

**WAC 388-101-3750 Psychoactive medication treatment plan.** (1) If the assessing treatment professional recommends psychoactive medications, the prescribing professional or service provider must document this in the client's psychoactive medication treatment plan. The service provider must ensure the plan includes the following:

- (a) A description of the behaviors, symptoms or conditions for which the medication is prescribed and a mental health diagnosis, if available;
- (b) The name, dosage, and frequency of the medication and subsequent changes in dosage must be documented in the person's medical record;
- (c) The length of time considered sufficient to determine if the medication is effective;
- (d) The behavioral criteria to determine whether the medication is effective and what changes in behavior, mood, thought, or functioning are considered evidence that the medication is effective; and
- (e) The anticipated schedule of visits with the prescribing professional.

(2) The service provider must make sure the treatment plan is updated when there is a change in psychoactive medication type, including intraclass changes.

(3) The service provider must:

(a) Review the name, purpose, potential side effects and any known potential drug interactions of the psychoactive medication(s) with the client and his/her legal representative and document the review in the client record; and

(b) Have available to staff and clients an information sheet for each psychoactive medication that is being used by each client served by the provider.

(4) The service provider must assist the client in obtaining and taking the medication when:

(a) The client's legal representative if any, is unavailable; and

(b) In the prescribing professional's opinion, medication is needed and no significant risks are associated with the use of the medication.

(5) If a client takes psychoactive medications to reduce challenging behaviors or to treat symptoms of a mental illness that are interfering with the client's ability to have positive life experiences and form and maintain relationships, the service provider must develop and implement a positive behavior support plan.

#### NEW SECTION

**WAC 388-101-3760 Psychoactive medication monitoring.** The service provider must:

(1) Monitor the client to help determine if the medication is effective based on criteria identified in the psychoactive medication treatment plan; and

(2) Report to the prescribing professional when:

(a) The medication does not appear to have the desired effects; and

(b) Any changes in client behavior or health that might be adverse side effects of the medication(s).

#### NEW SECTION

**WAC 388-101-3770 Psychoactive medications—Other.** If psychoactive medications are used for diagnoses other than mental illness or persistent challenging behavior, the service provider must follow the general medication requirements in WAC 388-101-3630 through 388-101-3730.

### CLIENT AND PROGRAM RECORDS

#### NEW SECTION

**WAC 388-101-3780 Confidentiality of client records.**

(1) The service provider must:

(a) Keep all client record information confidential;

(b) Ensure the department's right to have access to and copies of any records as requested or needed; and

(c) Provide access to and copies of client records to the client, or the client's legal representative upon their request.

(2) The service provider must have an authorized release of information form for any transfer or inspection of records, other than those specified in subsection (1) of this section. The authorization form must:

(a) Be specific to the type of information about the transfer or inspection; and

(b) Be signed by the client or client's legal representative.

(3) A signed release of information is valid for up to one year from the date of signature.

#### NEW SECTION

**WAC 388-101-3790 Charging for searching and duplicating records.** The service provider:

(1) Must not charge the department or the client for any searching or duplication of records requested or needed; and

(2) May charge the client's legal representative acting on behalf of the client for searching and duplication of records at a cost not to exceed twenty-five cents a page.

#### NEW SECTION

**WAC 388-101-3800 Retention of client records.** (1) While supporting a client, a service provider must keep all of the client's records for at least four years.

(2) After a client's participation with a service provider ends, the service provider must keep the client's records for at least six years.

#### NEW SECTION

**WAC 388-101-3810 Contents of client records.** (1) Crisis diversion service providers are exempt from the client record requirements specified in this section.

(2) Service providers must keep, in each client's record, information including but not limited to the following:

(a) Client's name, address, and Social Security number;

(b) Name, address, and telephone number of the client's involved family members, guardian or legal representative;

(c) Copies of legal guardianship papers, if provided;

(d) Client health records, including:

(i) Name, address, and telephone number of the client's physician, dentist, mental health service provider, and any other current health care service provider;

(ii) Current health care service providers' instructions about health care needed, including appointment dates and date of next appointment if appropriate;

(iii) Written documentation that the health care service providers' instructions have been followed; and

(iv) Record of major health events and surgeries when known.

(e) Copy of the client's most recent individual support plan;

(f) Client's individual instruction and support plan including:

(i) Instruction and support activities for each client as a basis for review and evaluation of client's progress;

(ii) Semiannual review of the individual instruction and support plan;

(iii) Consultation with other service providers and other interested persons;

(iv) Individual instruction and support plan revisions and changes; and

(v) Other activities relevant to the client that the client wants included.

(g) Progress notes and incident reports;

(h) The client's financial records for funds managed by the service provider, including:

(i) Receipts, ledgers and records of the client's financial transactions; and

(ii) Client's related bankbooks, checkbooks, bank registers, tax records and bank statements.

(i) Burial plans and wills.

#### NEW SECTION

**WAC 388-101-3820 Client's property records.** (1) Crisis diversion support service providers are exempt from the requirements in this section.

(2) The service provider must assist clients in maintaining current, written property records unless otherwise specified in the individual support plan. The record must consist of:

(a) A list of personal possessions with a value of at least twenty-five dollars that the client owns when moving into the program;

(b) A list of personal possessions with a value of seventy-five dollars or more per item after the client moves into the program;

(c) Description and identifying numbers, if any, of the property;

(d) The date the client purchased the items after moving into the program;

(e) The date and reason for addition or removal from the record; and

(f) The signature of the staff or client making the entry.

#### NEW SECTION

**WAC 388-101-3830 Record entries.** The service provider must ensure that all record entries are:

(1) Documented in ink;

(2) Written legibly at the time of or immediately following the occurrence of the event recorded; and

(3) Signed and dated by the person making the entry.

### **POSITIVE BEHAVIOR SUPPORTS**

#### NEW SECTION

**WAC 388-101-3840 Positive behavior support.** Positive behavior support means a recognized approach to supporting clients with challenging behaviors. Positive behavior support focuses on changing the client's environment, skills, and other factors that contribute to the client's challenging behavior(s). Positive behavior support uses a functional assessment to help build respectful plans for clients with challenging behavior(s).

#### NEW SECTION

**WAC 388-101-3850 Functional assessment.** (1) The service provider must conduct and document a functional

assessment before developing and implementing a client's positive behavior support plan.

(2) The service provider must start the functional assessment when the client begins to engage in behaviors that are considered challenging or are of concern.

(3) The service provider must ensure that a client's written functional assessment addresses:

- (a) A description of the client and pertinent history;
- (b) The client's overall quality of life;
- (c) The behaviors that are considered challenging and/or are of concern;
- (d) The factors or events which increase the likelihood of challenging behaviors;
- (e) When and where the challenging behavior(s) occurs most frequently;
- (f) The factors or events which increase the likelihood of appropriate behavior;
- (g) An analysis and assessment of the possible functions or purpose the challenging behavior(s) serve for the client including what he or she obtains or avoids by engaging in the behavior(s); and
- (h) A concluding summary of the functions or purpose that each challenging behavior serves for the client.

(4) The service provider must include the following sections in the format of each client's written functional assessment:

- (a) Description and pertinent history;
- (b) Definition of challenging behaviors;
- (c) Data analysis/assessment procedures; and
- (d) Summary statement(s).

#### NEW SECTION

##### **WAC 388-101-3860 Positive behavior support plan.**

(1) The service provider must develop, train to, and implement a written individualized positive behavior support plan for each client when:

- (a) The client takes psychoactive medications to reduce challenging behavior or treat a mental illness currently interfering with the client's ability to have positive life experiences and form and maintain personal relationships; or
- (b) Restrictive procedures, including physical restraints, identified in the residential services contract are planned or used.

(2) The service provider must:

(a) Base each client's positive behavior support plan on the functional assessment required in WAC 388-101-3850; and

(b) Complete and implement the client's positive behavior support plan within ninety days of identifying the client's symptoms and challenging behavior.

(3) The service provider must develop and implement a positive behavior support plan that is consistent with the client's cross system crisis plan, if any.

(4) The service provider must include the following sections in the format of each client's written positive behavior support plan:

- (a) Prevention strategies;
- (b) Teaching and training supports;

(c) Strategies for responding to challenging behaviors; and

(d) Data collection and monitoring methods.

(5) If data indicates that progress is not occurring after a reasonable time, but not longer than six months, the service provider must:

- (a) Evaluate the positive behavior support plan and the data collected;
- (b) Conduct a new functional assessment when necessary; and
- (c) Develop and implement revisions as needed.

#### NEW SECTION

**WAC 388-101-3870 Client protection.** While the functional assessment and positive behavior support plan are being developed, the service provider must:

- (1) Protect the client and others; and
- (2) Document in the client's record how the protection is being done.

#### **RESTRICTIVE INTERVENTIONS**

#### NEW SECTION

##### **WAC 388-101-3880 Group home providers.** (1)

When considering restrictive procedures, group home providers licensed as boarding homes must comply with all requirements in chapter 388-78A WAC regarding restraints.

(2) When considering restrictive procedures, group home providers licensed as adult family homes must comply with all requirements in chapter 388-76 WAC regarding restraints.

#### NEW SECTION

**WAC 388-101-3890 Restrictive procedures.** (1) The service provider must have documentation on the proposed intervention strategy before implementing restrictive procedures including:

- (a) A description of the behavior(s) that the restrictive procedures address;
- (b) A functional assessment of the challenging behavior(s);
- (c) The positive behavior support strategies that will be used;
- (d) A description of the restrictive procedure that will be used including:
  - (i) When and how it will be used; and
  - (ii) Criteria for termination of the procedure; and
- (e) A plan to document the use of the procedure and its effect.

(2) The service provider must terminate implementation of the restrictive procedures as soon as the need for protection is over.

#### NEW SECTION

**WAC 388-101-3900 Restrictive procedures approval.** (1) The service provider must have documentation of the proposed intervention strategy that:

- (a) Lists the risks of the challenging behavior(s);
  - (b) Lists the risks of the proposed restrictive procedure(s);
  - (c) Explains why less restrictive procedures are not recommended;
  - (d) Indicates non-restrictive alternatives to the recommendation that have been tried but were unsuccessful; and
  - (e) Includes space for the client and/or the client's legal representative to write comments and opinions regarding the plan and the date of those comments.
- (2) The service provider must consult with the division of developmental disabilities if:
- (a) The client and/or the client's legal representative disagree with parts of the proposed restrictive procedure; and
  - (b) An agreement cannot be reached.
- (3) Before the service provider implements restrictive procedures they must be approved in writing by:
- (a) The service provider's administrator; or
  - (b) Someone designated by the service provider to have approval authority; and
  - (c) Someone designated by the division of developmental disabilities, when required by the residential services contract.

NEW SECTION**WAC 388-101-3910 Physical intervention systems.**

Service providers who are using physical interventions with clients must have a physical intervention techniques system that includes at least the following:

- (1) Discussion of the need for positive behavior support;
- (2) Communication styles that help the client to calm down and resolve problems;
- (3) Techniques to prevent escalation of behavior before it reaches the stage of physical assault;
- (4) Techniques for staff to use in response to clients and their own fear, anger, aggression, or other negative feelings;
- (5) Cautions that physical intervention technique(s) may not be changed except as needed for individual disabilities, medical, health, and safety issues. A healthcare professional and a program trainer must approve all modifications;
- (6) Evaluation of the safety of the physical environment;
- (7) Issues of respect and dignity of the client;
- (8) Use of the least restrictive physical interventions depending upon the situation;
- (9) Identification of division of developmental disabilities approved and prohibited physical intervention techniques;
- (10) The need to release clients from physical restraint as soon as possible;
- (11) Instruction on how to support physical interventions as an observer, recognizing signs of:
  - (a) Distress by the client; and
  - (b) Fatigue by the staff; and
- (12) Discussion of the importance of complete and accurate documentation.

NEW SECTION

**WAC 388-101-3920 Physical interventions.** (1) The service provider must use the least restrictive intervention needed to protect each client, others, and property.

(2) The service provider may only use physical interventions with a client when positive or less restrictive techniques have been tried and determined to be insufficient to:

- (a) Protect the client;
  - (b) Protect others; or
  - (c) Prevent property damage.
- (3) The service provider must:
- (a) Terminate the intervention for the client as soon as the need for protection is over; and
  - (b) Only use restrictive physical interventions for the client as part of a positive behavior support plan except:
    - (i) In an emergency; or
    - (ii) When an unknown, unpredicted response from a client jeopardizes the client's or others safety.

NEW SECTION

**WAC 388-101-3930 Restrictive physical interventions.** Prior to implementing restrictive physical interventions with a client, the provider must:

- (1) Provide documentation to the division of developmental disabilities regarding the proposed intervention;
- (2) Involve the client and the client's legal representative in discussion regarding the need for physical intervention;
- (3) Determine the kind of notification the client's legal representative wants to receive when physical interventions are used; and
- (4) Comply with the requirements defined under WAC 388-101-3890.

NEW SECTION**WAC 388-101-3940 Physical intervention training.**

(1) Before using physical interventions with a client, the provider must train all staff who will be implementing those interventions in:

- (a) The use of physical interventions;
  - (b) Crisis prevention techniques; and
  - (c) Positive behavior support.
- (2) Each staff designated to supervise or observe restraint use must be trained in:
- (a) The observation and supervision of physical restraints; and
  - (b) The recognition of potential risks or negative outcomes related to the use of physical restraints.
- (3) The service provider must ensure that staff receiving physical intervention techniques training:
- (a) Complete the course of instruction;
  - (b) Demonstrate competency before being authorized to use the techniques with clients; and
  - (c) Review de-escalation and physical intervention techniques annually.

NEW SECTION

**WAC 388-101-3950 Mechanical and chemical restraints.** (1) The service provider must protect each client's right to be free from mechanical and chemical restraints and involuntary seclusion.

(2) The service provider must use the least restrictive alternatives needed to protect the client, others, or property.

(3) If needed, mechanical restraints may only be used for needed medical or dental treatment and only under the direction of a licensed physician or dentist.

(4) Restraints used as allowed by subsection (3) of this section must be justified and documented in the client's record.

NEW SECTION

**WAC 388-101-3960 Monitoring physical and mechanical restraints.** (1) The service provider must monitor any client who is being physically or mechanically restrained to ensure that risks to the client's health and safety are minimized.

(2) The service provider must keep documentation that includes:

- (a) A description of events immediately preceding the client's behavior which led to the use of the restraint;
- (b) The type of restraint used;
- (c) Length of time the client was restrained;
- (d) The client's reaction to the restraint;
- (e) Staff that were involved; and
- (f) Injuries sustained by anyone during the intervention.

**COMMUNITY PROTECTION**NEW SECTION

**WAC 388-101-3970 Community protection—Approval.** In order to provide support to community protection clients, the community protection service provider must, in addition to the other requirements in this chapter:

- (1) Be approved by the division of developmental disabilities to serve community protection clients;
- (2) Have security precautions reasonably available to enhance protection of neighbors, children, vulnerable adults, animals, and others;
- (3) Have for each client an integrated treatment plan with goals, objectives, and therapeutic interventions to assist the client to avoid offending or re-offending; and
- (4) Collaborate and coordinate between division of developmental disabilities staff, the treatment team, and community agencies and members.

NEW SECTION

**WAC 388-101-3980 Community protection—Policies and procedures.** A community protection service provider must, in addition to other policy and procedure requirements listed in this chapter, develop, train to, and implement the following procedures:

- (1) Client security and supervision;

(2) Use of a chaperone agreement that describes who will supervise the client when the client is not under the direct supervision of the community protection service provider;

(3) Compliance with state laws requiring sex offender registration with law enforcement;

(4) Reporting to the division of developmental disabilities the client's refusal to comply with the treatment plan; and

(5) Reporting to the division of developmental disabilities and law enforcement client actions that violate the law or a court order.

NEW SECTION

**WAC 388-101-3990 Community protection—Treatment team meetings.** The community protection service provider must participate in treatment team meetings quarterly or more frequently as needed.

NEW SECTION

**WAC 388-101-4000 Community protection—Staff training.** In addition to the staff training requirements in this chapter and the residential services contract, the community protection service provider must ensure that community protection program staff receive training specific to:

- (1) Community protection within ninety calendar days of working with a community protection client; and
- (2) The needs, supports, and services for clients to whom they are assigned.

NEW SECTION

**WAC 388-101-4010 Community protection—Written individual plan.** (1) The community protection service provider must develop and implement a client's written individual plan as required in the residential services contract and that is based on:

- (a) A qualified professional's risk assessment of emotional and behavioral issues related to community protection risks; or
- (b) A written risk assessment and treatment recommendations by:
  - (i) A sexual offender treatment provider or sexual offender treatment provider affiliate if the client has a sexual offense history; or
  - (ii) A licensed psychologist or psychiatrist with specialized training in the treatment of or three or more years' experience treating violent or aggressive behavior when the person being assessed has demonstrated violent, dangerous, or aggressive behavior.

(2) In addition to the requirements in WAC 388-101-3460 through 388-101-3510, the community protection service provider must include the following in the client's written individual plan:

- (a) Intervention strategies and techniques related to community protection risks;
  - (b) Restrictions and measures, including security precautions; and
  - (c) A therapist's approval of the written individual plan.
- (3) For community protection clients with a history of sexual offending, the assessment by a certified sexual

offender treatment provider or sexual offender treatment provider affiliate may serve as the functional assessment and treatment recommendations related to the sexual behaviors.

#### NEW SECTION

**WAC 388-101-4020 Community protection—Client records.** In addition to all other client record requirements in this chapter community protection service providers must include the following in the client's record:

- (1) Psychosexual and/or psychological evaluations and risk assessments;
- (2) Plans and assessments including:
  - (a) The written individual plan;
  - (b) The functional assessment;
  - (c) The positive behavior support plan; and
  - (d) A therapist approved treatment plan.
- (3) The client's sex offender registration with law enforcement authorities when required by law;
- (4) Notice to the division of developmental disabilities of the client's sex offender registration; and
- (5) Agreements, requirements, and plans, including the chaperone agreement, with individuals who support the client.

#### NEW SECTION

**WAC 388-101-4030 Community protection—Client transportation.** In addition to the other client transportation requirements defined in this chapter, community protection service providers must provide or ensure supervision of the client during transportation.

#### NEW SECTION

**WAC 388-101-4040 Community protection—Program residential location.** Before securing and using a residence to provide support to the community protection program client, the community protection service provider must:

- (1) Conduct and document site checks of the proposed residence at different days and times of the week;
- (2) Consider the client's specific offense patterns;
- (3) Determine appropriate and necessary restrictive procedures, including security precautions; and
- (4) Obtain written approval for the residential site from the division of developmental disabilities.

#### NEW SECTION

**WAC 388-101-4050 Community protection—Reducing a client's restrictions.** The community protection service provider must participate in any treatment team meetings held to review and consider a reduction in client restrictions.

#### NEW SECTION

**WAC 388-101-4060 Community protection—Leaving the program against treatment team advice.** (1) The community protection service provider must immediately notify the division of developmental disabilities when the cli-

ent leaves the community protection program against treatment team advice; and

- (2) Document the client's departure in the client's record.

#### **CRISIS DIVERSION BED AND SUPPORT SERVICES**

#### NEW SECTION

**WAC 388-101-4070 Crisis diversion—Access to services.** The crisis diversion services provider must:

- (1) Be approved by the department to provide crisis diversion services; and
- (2) Make crisis diversion services available to clients twenty-four hours per day.

#### NEW SECTION

**WAC 388-101-4080 Crisis diversion bed services—Location.** The crisis diversion bed services provider must:

- (1) Provide those services in a residence that is maintained by the crisis diversion bed services provider;
- (2) Provide a private, furnished bedroom for each crisis diversion client; and
- (3) Support only one client in each residence.

#### NEW SECTION

**WAC 388-101-4090 Crisis diversion bed services—Services and activities.** The crisis diversion bed services provider must provide the following services and activities:

- (1) Support staff, twenty-four hour per day, seven days a week, to meet the client's needs as identified in the client's assessment;
- (2) Access to the instruction and support services identified in the client's individual support plan;
- (3) Three meals per day plus snacks;
- (4) The following items at no cost to the client:
  - (a) Toiletries and personal care items;
  - (b) Bedding and towels;
  - (c) Access to laundry facilities; and
  - (d) Access to local telephone calls.
- (5) Therapeutic interventions aimed at improving the client's functioning;
- (6) Medication monitoring as needed;
- (7) Transportation to and from the crisis diversion bed location and other necessary appointments or services;
- (8) Referral to health care services as needed;
- (9) Supports for performing personal hygiene routines and activities of daily living if needed by the client; and
- (10) An accessible site for clients with physical disabilities.

#### NEW SECTION

**WAC 388-101-4100 Crisis diversion bed services—Treatment plan.** (1) Crisis diversion bed services providers must develop a crisis services treatment plan within forty-eight hours of the client's placement.

- (2) The treatment plan must include:
  - (a) The supports and services that must be provided; and
  - (b) Client discharge goals.



NEW SECTION

**WAC 388-101-4110 Crisis diversion bed and support service providers—Client records.** (1) Crisis diversion bed and support service providers must keep the following information in client records:

- (a) Client's name, address, and Social Security number;
- (b) Name, address, and telephone number of the client's relative or legal representative; and
- (c) Progress notes and incident reports on clients.

NEW SECTION

**WAC 388-101-4120 Crisis diversion bed services—Client records.** (1) Crisis diversion bed services providers must maintain a record for each client admitted to the crisis diversion bed.

(2) The client record must include the following information when available:

- (a) Basic demographic information;
- (b) Referral process and intake information;
- (c) Medication records;
- (d) Psychiatric records;
- (e) Crisis diversion bed services provider notes;
- (f) The crisis services treatment plan;
- (g) Cross systems crisis plan;
- (h) Disposition at the client's discharge;
- (i) Dates of admission and discharge;
- (j) Incident reports;
- (k) Copies of legal representative and guardianship papers;
- (l) Health records including the name, address, and telephone number of the client's:
  - (i) Physician;
  - (ii) Dentist;
  - (iii) Mental health service provider; and
  - (iv) Any other health care service providers.
- (m) Health care service providers' instructions, if any, about health care tasks and date of next appointment;
- (n) Written documentation that the health care service providers' instructions have been followed; and
- (o) A record of known major health events, including surgeries.

NEW SECTION

**WAC 388-101-4130 Crisis diversion support services—Location.** The crisis diversion support services provider must provide those services in the client's own home.

NEW SECTION

**WAC 388-101-4140 Crisis diversion support services—Services and activities.** The crisis diversion support services provider must provide the following services and activities:

- (1) Therapeutic interventions to help stabilize the client's behavioral symptoms;
- (2) Assistance with referral to mental health services if needed; and

- (3) Technical assistance to the client's caregivers on support strategies.

**INCIDENT REPORTING**NEW SECTION

**WAC 388-101-4150 Mandated reporting to the department.** Service providers:

(1) Are mandated reporters and must meet the requirements of chapter 74.34 RCW;

(2) Must make mandated reports to the department's centralized toll free complaint telephone number or FAX number immediately when:

(a) There is reasonable cause to believe that a vulnerable adult, as defined in chapter 74.34 RCW, has been abandoned, abused, neglected, or financially exploited; or

(b) There is a reason to suspect physical or sexual assault.

(3) Must also make written and oral reports to the department as specified in the provider's residential services contract;

(4) Must protect the alleged victim and others from further abuse, neglect, abandonment, and financial exploitation; and

(5) May have their certification and/or contract terminated if they fail to report such incidents.

NEW SECTION

**WAC 388-101-4160 Mandated reporting to law enforcement.** The service provider must immediately report to the appropriate law enforcement agency if there is reason to suspect that any of the following has occurred:

(1) Sexual Assault: Any alleged or suspected sexual assault;

(2) Physical Assault (nonclient to client): Any suspected physical assault as well as any act that causes fear of imminent harm; and

(3) Physical Assault (client to client): Any suspected physical assault that causes bodily injury requiring more than first aid, or in the event of:

(a) Injuries that appear on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) Fractures;

(c) Choking attempts;

(d) Patterns of physical assault between the same vulnerable adults or involving the same vulnerable adults;

(e) A reasonable cause to believe that an act has caused fear of imminent harm; and

(f) Any incident, regardless of injury, if requested by the client, his/her legal representative, or family member.

NEW SECTION

**WAC 388-101-4170 Mandating reporting policies and procedures.** (1) The service provider must develop, train on and implement written policies and procedures for:

(a) Immediately reporting mandated reporting incidents to:

- (i) The department and law enforcement;
  - (ii) Appropriate persons within the service provider's agency as designated by the service provider; and
  - (iii) The alleged victim's legal representative.
  - (b) Protecting clients;
  - (c) Preserving evidence when necessary; and
  - (d) Initiating an outside review or investigation.
- (2) The service provider must not have or implement any policies or procedures that interfere with a mandated reporter's obligation to report.

#### NEW SECTION

**WAC 388-101-4180 Investigation of reports.** (1) The department will determine whether a report of client abandonment, abuse, neglect, or financial exploitation needs to be investigated.

(2) The department investigation will include an investigation of allegations about one or more of the following:

- (a) A service provider;
- (b) Anyone associated with a service provider; or
- (c) A client receiving services under this chapter.

(3) If, after completing an investigation under this chapter, the department concludes that it is more likely than not that the alleged perpetrator abandoned, abused, neglected, or financially exploited a client, the department will make a preliminary finding against the perpetrator, as defined in WAC 388-101-4270 through 388-101-4340.

### REMEDIES

#### NEW SECTION

**WAC 388-101-4190 Provisional certification.** (1) The department may impose a provisional certification, not to exceed one hundred eighty days, if any service provider does not comply with requirements of this chapter, other applicable laws and rules, or the residential services contract.

(2) At the end of provisional certification the department may:

- (a) Approve the service provider for regular certification if the service provider has complied with certification requirements; or
- (b) Revoke the service provider's certification and terminate the residential services contract if the service provider has not complied with all certification requirements.

#### NEW SECTION

**WAC 388-101-4200 Decertification.** The department may revoke any service provider's certification at any time for noncompliance with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW or other relevant federal, state and local laws, requirements or ordinances.

#### NEW SECTION

**WAC 388-101-4210 Community protection program—Circumstances resulting in enforcement remedies.** (1) This section applies only to service providers providing services to community protection clients.

(2) The department is authorized to impose the enforcement remedies described in chapter 71A.12 RCW when the service provider has:

(a) Failed or refused to comply with the requirements of chapter 71A.12 RCW and the rules adopted under the chapter;

(b) Failed or refused to comply with the certification process;

(c) Prevented or interfered with the department's certification evaluation or complaint investigation by the department;

(d) Failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW; or

(e) Knowingly, or with reason to know, made a false statement of material fact related to certification or contracting with the department, or in any matter under investigation by the department.

#### NEW SECTION

**WAC 388-101-4220 Community protection program—Authorized enforcement remedies.** (1) This section applies only to service providers providing services to community protection clients.

(2) Whenever circumstances in WAC 388-101-4210 are present the department may impose any enforcement remedies authorized by chapter 71A.12 RCW and any rules adopted under it. The department may:

(a) Decertify or refuse to renew the certification of a service provider;

(b) Impose conditions on a service provider's certification status;

(c) Suspend department referrals to the service provider;

(d) Require a service provider to implement a plan of correction developed by the department and to cooperate with subsequent monitoring of the service provider's progress;

(e) Impose civil penalties of not more than one hundred fifty dollars per day per violation in the event a service provider fails to implement the plan of correction developed by the department or fails to cooperate with any subsequent monitoring; and

(f) Impose a separate violation each day during which the same or similar action or inaction occurs.

(2) The provisions of chapter 34.05 RCW apply to enforcement actions under this section. Except for the imposition of civil penalties, the effective date of enforcement actions will not be delayed or suspended pending any hearing or informal review.

(3) The enforcement actions and penalties authorized in this section are not exclusive or exhaustive and nothing in this section prohibits the department from taking any action authorized in statute or rule or under the terms of a contract with the service provider.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

**WAC 388-101-4230 Community protection program—Considerations for imposing remedies.** (1) This section applies only to service providers providing services to community protection clients.

(2) When determining the appropriate enforcement action under WAC 388-101-4220, the department will select actions in proportion to the seriousness of the harm or threat of harm to clients being served by the service provider.

(3) The department may take enforcement actions that are more severe for violations that are uncorrected, repeated, or pervasive or which present a serious threat of harm to the health, safety or welfare of clients served by the service provider.

**INFORMAL DISPUTE RESOLUTION AND APPEALS**NEW SECTION

**WAC 388-101-4240 Informal dispute resolution.** (1) When a service provider disagrees with the department's finding of a violation or certification action under this chapter, the service provider may request an informal dispute resolution meeting with the department.

(2) The service provider must make a written request to the department for an informal dispute resolution meeting within ten working days of receipt of the written notice of the department's final report of findings and/or certification action.

(3) The service provider must submit a written statement identifying the challenged action, and include specifically the issues and regulations involved.

NEW SECTION

**WAC 388-101-4250 Administrative review.** (1) A service provider may request an administrative review of a certification action within twenty-eight days of receipt of the written notice of the department's certification action.

(2) The service provider must make the request in writing and must:

(a) Sign the request;

(b) Identify the challenged decision and the date it was made;

(c) State specifically the issues and regulations involved and the grounds for the disagreement; and

(d) Include with the request copies of any supporting documentation for the service provider's position.

NEW SECTION

**WAC 388-101-4260 Appeal rights.** (1) A service provider:

(a) May contest a decision made by the department pursuant to chapter 71A.12 RCW and according to the provisions of chapter 34.05 RCW and chapter 388-02 WAC;

(b) Must file any request for a hearing with the office of administrative hearings at the mailing address specified in the notice of imposition of an enforcement remedy; and

(c) Must make the request within twenty-eight days of receipt of the written notice of the department's certification action.

(2) Certification actions are effective immediately upon notice and will continue pending any hearing.

**ABUSE-NEGLECT FINDING - INDIVIDUAL**NEW SECTION

**WAC 388-101-4270 Notice of preliminary finding.** The department will:

(1) Notify the alleged perpetrator in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect or financial exploitation of a client. The written notice will not include the identities of the alleged victim, reporter and witnesses;

(2) Make a reasonable, good faith effort to determine the last known address of the alleged perpetrator; and

(3) Serve notice of the preliminary finding as provided in chapter 388-02 WAC.

(4) The department may extend the time frame for written notification beyond ten working days to include the time needed to translate the notification letter or make provisions for the safety of the alleged victim.

NEW SECTION

**WAC 388-101-4280 Reporting preliminary findings.**

(1) In a manner consistent with confidentiality requirements concerning the client, witnesses, and reporter, the department may provide notification of a preliminary finding to:

(a) Other divisions within the department;

(b) The agency or program identified under RCW 74.34.068 with which the alleged perpetrator is associated as an employee, volunteer or contractor;

(c) Law enforcement; and

(d) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as a preliminary finding.

NEW SECTION

**WAC 388-101-4290 Disputing a preliminary finding.**

(1) An alleged perpetrator of abandonment, abuse, neglect, or financial exploitation of a client may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the alleged perpetrator's written request for a hearing within thirty calendar days of the date the individual was served with notice of the preliminary finding.

(4) The written request for a hearing must include:

(a) The full legal name, current address and phone number of the alleged perpetrator;

(b) A brief explanation of why the alleged perpetrator disagrees with the preliminary finding;

(c) A description of any assistance needed in the administrative appeal process by the alleged perpetrator, including a foreign language or sign language interpreter or any reasonable accommodation for a disability; and

(d) The alleged perpetrator's signature.

#### NEW SECTION

**WAC 388-101-4300 Disclosure of investigative and finding information.** (1) Confidential information provided by the department to the alleged perpetrator may only be used to challenge preliminary findings through the appeal process.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the client will be redacted from documents unless otherwise ordered by the administrative law judge consistent with chapter 74.34 RCW and other applicable state and federal laws.

#### NEW SECTION

**WAC 388-101-4310 Hearing procedures to dispute a preliminary finding.** (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

(2) The administrative law judge shall determine whether a preponderance of the evidence supports the preliminary finding that the alleged perpetrator abandoned, abused, neglected, or financially exploited a vulnerable adult, and shall issue a preliminary order.

#### NEW SECTION

**WAC 388-101-4320 Appeal of the administrative law judge's preliminary order on a finding.** (1) If the alleged perpetrator or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not modify the finding in the department's records until a final hearing decision is issued.

#### NEW SECTION

**WAC 388-101-4330 Finalizing a preliminary finding.** (1) A preliminary finding becomes a final finding when:

(a) The department gives the alleged perpetrator notice of the preliminary finding pursuant to WAC 388-101-4270 and the alleged perpetrator does not request an administrative hearing;

(b) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues a preliminary order upholding the finding and the alleged perpetrator fails to appeal the preliminary order to the department's board of appeals; or

(c) The board of appeals issues a final order upholding the finding.

(2) The final finding is permanent and will only be removed from the department's records if:

(a) It is rescinded following judicial review; or

(b) The department may decide to remove the single finding of neglect from its records based upon a written petition by the alleged perpetrator provided that no further findings have occurred, and at least one calendar year has passed since the finding was finalized and recorded.

#### NEW SECTION

**WAC 388-101-4340 Reporting final findings.** (1) The department will report a final finding of abandonment, abuse, neglect and financial exploitation within ten working days to the following:

(a) The perpetrator;

(b) The service provider that was associated with the perpetrator during the time of the incident;

(c) The service provider that is currently associated with the perpetrator, if known;

(d) The appropriate licensing, contracting, or certification authority; and

(e) The department's list of findings of abandonment, abuse, neglect, and financial exploitation.

(2) The findings may be disclosed to the public upon request.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-101-1010	What is the purpose of this chapter?
WAC 388-101-1020	What definitions apply to this chapter?
WAC 388-101-1101	Abuse and neglect reporting requirements.
WAC 388-101-1106	Investigation of mandated reports.
WAC 388-101-1111	Notice of an initial finding.
WAC 388-101-1116	Reporting initial findings.
WAC 388-101-1121	Disputing an initial finding.
WAC 388-101-1126	Disclosure of investigative and finding information.
WAC 388-101-1131	Hearing procedures to dispute an initial finding.
WAC 388-101-1136	Appeal of the administrative law judge's initial order on a finding.
WAC 388-101-1141	Finalizing an initial finding.
WAC 388-101-1146	Reporting final findings.

WAC 388-101-1180	What are residential services?	WAC 388-101-1520	What occurs during review and evaluation?
WAC 388-101-1190	Who certifies residential services?	WAC 388-101-1530	May service providers disagree with evaluation findings?
WAC 388-101-1200	Where are residential services provided?	WAC 388-101-1540	May a service provider receive provisional certification?
WAC 388-101-1205	Where are crisis diversion services provided?	WAC 388-101-1550	When may RCS decertify a service provider?
WAC 388-101-1210	Who may receive residential services?	WAC 388-101-1600	What are administrators of service providers required to do?
WAC 388-101-1220	What physical and safety requirements exist for residential services?	WAC 388-101-1610	What type of administrative documents are service providers required to have?
WAC 388-101-1230	How must service providers assist clients in regulating water temperature?	WAC 388-101-1620	What are the requirements for personnel policies?
WAC 388-101-1240	What are supported living services?	WAC 388-101-1630	What nondiscrimination requirements must agencies and service providers meet?
WAC 388-101-1250	What are crisis diversion services?	WAC 388-101-1640	What staffing requirements must service providers meet?
WAC 388-101-1260	What are group homes?	WAC 388-101-1650	May clients instruct and support other clients?
WAC 388-101-1400	When must a service provider document a client's refusal to participate in services?	WAC 388-101-1660	Who needs background checks?
WAC 388-101-1410	May a service provider offer services to nonclients in the same household as clients?	WAC 388-101-1670	What are the minimum requirements for staff employed by service providers?
WAC 388-101-1420	Who pays for a client's residential services?	WAC 388-101-1680	What staff training is required?
WAC 388-101-1430	When may a service provider receive initial set-up funds from DSHS?	WAC 388-101-1690	How often must performance reviews be conducted for staff of service providers?
WAC 388-101-1440	What are the different types of certification?	WAC 388-101-1700	When must service providers have staff-coverage schedules approved by DDD?
WAC 388-101-1460	When may RCS grant initial certification to an agency?	WAC 388-101-1710	What happens when a service provider's ownership changes?
WAC 388-101-1470	How does an agency apply for initial certification?	WAC 388-101-1720	When may a client's service provider change?
WAC 388-101-1480	What happens after an agency receives initial certification?	WAC 388-101-1730	Are clients' records considered confidential?
WAC 388-101-1490	May initial certification be extended for a service provider?	WAC 388-101-1740	How long does a service provider need to keep client records?
WAC 388-101-1500	How does a service provider receive regular certification?		
WAC 388-101-1510	How often are reviews and evaluations done for service providers?		

WAC 388-101-1750	What information do service providers need to keep in client records?	WAC 388-101-2010	What is an individual instruction and support plan (IISP) for clients?
WAC 388-101-1760	What information do crisis diversion service providers need to keep in client records?	WAC 388-101-2020	Who may participate in developing the IISP for each client?
WAC 388-101-1770	Do service providers need to keep client's property records?	WAC 388-101-2030	Who oversees the IISP for each client?
WAC 388-101-1780	Are there requirements for record entries?	WAC 388-101-2040	May a service provider manage a client's funds?
WAC 388-101-1790	Who must service providers notify in emergencies?	WAC 388-101-2050	May a service provider hold bankbooks and bankcards for a client?
WAC 388-101-1800	What are client services?	WAC 388-101-2060	May a service provider combine agency and client funds?
WAC 388-101-1810	What health and safety support may a service provider offer to a client?	WAC 388-101-2070	Does the service provider need to develop an individual financial plan (IFP) for clients?
WAC 388-101-1820	What support may a service provider offer to a client to increase personal power and choices?	WAC 388-101-2080	What information must the IFP include?
WAC 388-101-1830	What support may a service provider offer to increase a client's competence and self-reliance?	WAC 388-101-2090	How does a service provider manage client funds?
WAC 388-101-1840	How may service providers assist clients in gaining positive recognition?	WAC 388-101-2100	What documentation must service providers keep to protect a client's financial interests?
WAC 388-101-1850	What support may a service provider offer to increase the positive relationships in the client's life?	WAC 388-101-2110	How are a client's funds transferred when they are managed by a service provider?
WAC 388-101-1860	How may a service provider assist clients with becoming integrated into their community?	WAC 388-101-2120	How does a service provider handle loans to a client?
WAC 388-101-1870	What is an individual service plan/plan of care (ISP/POC) for clients?	WAC 388-101-2130	When must a service provider pay a client?
WAC 388-101-1880	Who is responsible for completing and overseeing a client's ISP/POC?	WAC 388-101-2140	What must service providers do to support a client's health?
WAC 388-101-1890	Who may participate in creating a client's ISP/POC?	WAC 388-101-2150	May a client refuse health care services?
WAC 388-101-1900	How often must the ISP/POC be reviewed?	WAC 388-101-2160	When may client funds be used for health services?
WAC 388-101-2000	What plans must crisis diversion service providers develop?	WAC 388-101-2300	Client transportation.
		WAC 388-101-2330	May an agency or service provider contest a RCS decision?
		WAC 388-101-2340	When does an administrative review conference occur?

WAC 388-101-2350 May an administrative review conference be conducted by telephone?

WAC 388-101-2360 What happens during the administrative review conference?

WAC 388-101-2370 May an agency or service provider contest the decision from the administrative review conference?

WAC 388-101-2380 Does RCS make exceptions to the requirements in this chapter?

WAC 388-101-2400 Who may delegate nursing care tasks?

WAC 388-101-2410 What training is required before staff are qualified to perform delegated tasks?

WAC 388-101-2420 Do nursing assistants need to comply with department of health requirements?

WAC 388-101-2430 Who is authorized to provide consent for a client's receiving health care?

WAC 388-101-2440 What rights do nursing assistants have concerning the delegation of nursing care tasks?

WAC 388-101-2450 Are nursing assistants liable for errors while doing nursing care tasks?

WAC 388-101-2460 What happens if unqualified staff do a nursing task?

WAC 388-101-2470 What technical assistance may service providers get from DSHS for nurse delegation requirements?

WAC 388-101-2480 What happens when DSHS finds a service provider in violation of nurse delegation requirements?

WAC 388-101-2490 May a service provider have a chance to correct violations before being fined?

WAC 388-101-2500 May civil fines be imposed during technical assistance visits?

WAC 388-101-2510 How does DSHS impose a civil fine?

WAC 388-101-2520 When is payment due for a civil fine?

WAC 388-101-2530 May a service provider disagree with DSHS findings of a violation?

WAC 388-101-2540 May a service provider contest a civil fine?

**WSR 07-20-007**  
**WITHDRAWAL OF PROPOSED RULES**  
**GAMBLING COMMISSION**  
 [Filed September 20, 2007, 9:57 a.m.]

Chapter 230-16 WAC was proposed in WSR 07-16-088 and adopted in WSR 07-19-069. Due to an inadvertent error, this same new chapter was also proposed in WSR 07-17-071 with a hearing in October. We request that the second filing WSR 07-17-071 be withdrawn.

Susan Arland  
 Rules Coordinator

**WSR 07-20-009**  
**WITHDRAWAL OF PROPOSED RULES**  
**GAMBLING COMMISSION**  
 [Filed September 20, 2007, 9:57 a.m.]

Chapter 230-21 WAC was proposed in WSR 07-16-087 and adopted in WSR 07-19-070. Due to an inadvertent error, this same new chapter was also proposed in WSR 07-17-072 which is going to hearing on [in] October. We request that WSR 07-17-072 be withdrawn.

Susan Arland  
 Rules Coordinator

**WSR 07-20-011**  
**WITHDRAWAL OF PROPOSED RULES**  
**GAMBLING COMMISSION**  
 [Filed September 20, 2007, 10:03 a.m.]

Chapter 230-48 WAC was proposed to be repealed in WSR 07-19-073. A second filing to repeal chapter 230-48 WAC was inadvertently made under WSR 07-19-076. We request that chapter 230-48 WAC be removed from WSR 07-19-076.

Susan Arland  
 Rules Coordinator

**WSR 07-20-031**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed September 24, 2007, 4:42 p.m.]

Original Notice.  
 Preproposal statement of inquiry was filed as WSR 05-01-096 and 07-14-146.

Title of Rule and Other Identifying Information: Group A Public Water Supplies, chapter 246-290 WAC, the state board of health delegated rule-making authority to the department of health (the department) for this rule revision on November 10, 2004, (the Municipal Water Law (MWL), Planning and Engineering) and May 10, 2006, (Long Term 2 Enhanced Surface Water Treatment Rule (LT2)).

Hearing Location(s): Lacey Community Center, Woodland Creek Community Park, 6729 Pacific Avenue S.E., Lacey, WA 98503, on November 9, 2007, at 1:00 p.m.; and at Spokane Falls Community College, Student Union Building, Room #17, 3410 West Fort George Wright Drive, Spokane, WA 99224-5288, on November 13, 2007, at 1:00 p.m.

Date of Intended Adoption: November 16, 2007.

Submit Written Comments to: Michelle K. Austin, P.O. Box 47822, Olympia, WA 98504-7822, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2253, by October 31, 2007.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by October 26, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal has two purposes: To modify existing rule requirements to clearly establish the planning and engineering requirements of the MWL in the state drinking water rules; and to adopt the United States Environmental Protection Agency's (EPA) LT2 rule. The public health objective of the LT2 rule is to strengthen protection against the disease-causing organism *Cryptosporidium*, a pathogenic protozoan parasite, which is of particular concern because it is resistant to chlorine.

Reasons Supporting Proposal: The MWL directs changes to the department's planning and engineering review practices. The department is proposing revisions to comply with the law.

The department has a primacy agreement with EPA to assume lead responsibilities for implementation of the federal Safe Drinking Water Act (RCW 43.20.050). The primacy agreement outlines a number of activities the department must do to maintain primacy for Group A public water systems in the state. To maintain primacy, the LT2 rule must be adopted.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: Chapters 70.119A, 90.03, and 43.20 RCW.

Rule is necessary because of federal law, 40 C.F.R. Parts 9, 141, and 142.

Name of Proponent: Department of health, division of environmental health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kristin Bettridge, Tumor, (360) 236-3166.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

The department of health (DOH) assessed the impact on small business of the rules in this proposal that are subject to economic impact analysis. The impacts to the majority of small businesses are less than \$51 and thus below the thresh-

old amount of \$100 under the definition of "minor costs" in RCW 19.85.020. However, there are a few small businesses for which rule implementation would cost more than \$100, so DOH analyzed the impacts.

#### Is a Small Business Economic Impact Statement (SBEIS) Required for This Proposed Rule?

Yes, an SBEIS is required for portions of this proposed rule.

However, DOH has determined that no SBEIS is required for the portions of the rule listed below because they adopt requirements of the MWL without material change. See RCW 19.85.025(3) and 34.05.310 (4)(c). Costs related to these proposed sections are described in the significant analysis prepared under RCW 34.05.328.

#### Municipal Water Law Planning and Engineering:

- Water system plans (WAC 246-290-100 (4)(a)(iv)): Sets a requirement for a municipal water supplier to define its retail service area and include this on its service area map, to cover the requirements in RCW 43.20.260.
- Duty to provide service (WAC 246-290-106): This section incorporates duty-to-provide-service requirements in RCW 43.20.260.
- Place of use expansion (WAC 246-290-107): Sets the requirements in RCW 90.03.386 that reference and link to chapter 43.20 RCW allowing a municipal water supplier to expand its place of use as defined in a water right.
- Consistency with local plans and regulations (WAC 246-290-108 (1), (2), (3)(a), and (4)): Sets requirements to ensure consistency with local plans and regulations as defined in RCW 90.03.386 that reference and link to chapter 43.20 RCW. This is a prerequisite of a municipal water supplier expanding its place of use. This section also covers the necessity to ensure local consistency with the duty-to-provide-service requirements required in RCW 43.20-260.

**Long Term 2 Enhanced Surface Water Treatment Rule:** DOH is adopting this federally-mandated rule by reference. DOH is required to adopt this rule to maintain the state's primacy agreement with the United States Environmental Protection Agency. Because this federal rule is adopted by reference, no SBEIS is required under RCW 19.85.025(3) and 34.05.310 (4)(c).

**Minor Clarifications and Corrections:** There are numerous clarifications and corrections of typographical errors and citations throughout the document. These changes are exempt because they do not change the substance, meaning, or application of the rule. No SBEIS is required under RCW 19.85.025(3) and 34.05.310 (4)(c).

**Requirements that Need a Small Business Economic Impact Statement:** The remainder of this SBEIS will focus on three changes to chapter 246-290 WAC that require analysis. The proposed changes are:

1. Definitions (WAC 246-290-010): Add definitions for "retail service area" and "service area" to ensure water systems have a basis for defining their retail service area and to identify where their duty to provide service applies.



2. Water system plans (WAC 246-290-100 (8)(b)): Requires a water system to obtain approval of its water system plan from its governing body before DOH's approval.

3. Consistency with local plans and regulations (WAC 246-290-108 (3)(b)): Requires documentation that a minimum of sixty days was provided to the local government jurisdiction to review a water system plan. It also allows for local government jurisdictions to request an extension and notify DOH if an inconsistency exists in the water system plan.

**Which Industries are Affected by This Proposed Rule?**

The affected businesses are entities that own water systems that meet the definition of municipal water supplier in RCW 90.03.015 and are small businesses. These are typically small water systems or small companies that own for-profit water systems. The North American Industrial Code System for Washington businesses lists 236 businesses as owning for-profit water systems. Based on our knowledge of

this industry, we are certain there are more than 236 for-profit water systems; however, we have no way of knowing how many of these meet the definition of municipal water supplier in RCW 90.03.015.

**What are the Costs of Complying With This Rule for Small Businesses and for the Largest 10% of Businesses Affected?**

The cost of meeting the requirements for the majority of small water systems is \$51 or less. Very few water systems with more than 1,000 connections would qualify as a small business and thus fall into a higher cost category.

The United States Department of Labor and Industry statistics show that the smallest for-profit entities in the water supply industry have an average of one employee and the largest have about twenty employees. To fully evaluate the cost of the rule on small businesses, an evaluation was made based on the size of water system, the cost per connection, and the cost per employee. The following table shows this breakdown.

Comparison of Costs for Meeting Requirements

	<b>Very Small &lt; 100 Connections</b>	<b>Small 100 – 999 Connections</b>	<b>Medium 1,000 – 9,999 Connections</b>	<b>Large 10,000 or More Connections</b>
<b>Costs</b>	\$51	\$51	\$153	\$204
<b>Average Number of Connections</b>	40	324	3,218	27,014
<b>Cost per Connection</b>	<b>\$1.27</b>	<b>\$0.16</b>	<b>\$0.05</b>	<b>\$0.008</b>
<b>Average Number of Employees</b>	1	2	15	20
<b>Cost per Employee per Hour</b>	<b>\$.02</b>	<b>\$0.20</b>	<b>\$0.07</b>	<b>\$0.10</b>

**Does the Rule Impose a Disproportionate Impact on Small Businesses?**

All businesses that must comply are "small" as defined in chapter 19.85 RCW. The proposed rule would have a disproportionate impact on smaller small businesses compared with larger small businesses. However, the costs are extremely low for all businesses that must comply.

**If the Rule Imposes a Disproportionate Impact on Small Businesses, What Efforts Were Taken to Reduce That Impact?**

DOH staff consulted with interested stakeholders, including small businesses, through mailings, newsletter articles, web postings, and meetings. The proposed rule was designed to minimize the cost to small water systems, while still ensuring the rule meets the intent of the MWL. Keeping the cost down was done by:

- Minimizing the requirements for municipal water suppliers that are not expanding, but are required to complete a small water system management program;
- Integrating planning requirements to the maximum extent possible with current planning requirements; and
- Working with stakeholders to ensure the rule was written to be as flexible as possible.

This rule as a whole will impose very minor costs on smaller municipal water suppliers, including those that are small businesses.

**How are Small Businesses Involved in the Development of This Rule?**

Beginning in 2003, DOH staff worked closely with stakeholders, including small water systems, to minimize the burden of this rule. DOH developed preliminary briefing papers in July 2005 on the requirements and sent them out to stakeholders and interested parties for comment. Several stakeholder meetings were held to discuss these requirements. The comments we received resulted in the development of discussion papers in June 2006. The discussion papers outlined alternatives to the requirements. DOH attended several meetings of various interest groups over the summer and early fall of 2006 to solicit comments. The briefing papers were revised in October 2006 based on comments received on the discussion papers. The final briefing papers served as the basis for writing the rule language. The draft rule was then sent out for informal comments during June 2007.

DOH staff made several presentations targeted toward small water systems during the development of the regulation. Presentations were made to the 2006 Drinking Water Seminars attendees, the Association of Washington Business,

the Washington Water and Sewer Districts, the Washington Water Utility Council, and the Washington Water Supply Advisory Committee, which was legislatively created to advise DOH on drinking water issues.

DOH made additional efforts to obtain input from the Washington Public Utility District Association. PUDs typically manage many small water systems and they provided us with insight into the challenges facing small water systems.

**Will Compliance with the Proposed Rule Cause Affected Businesses to Create or Lose Jobs?**

The per employee costs to comply with the portions of the proposed rule that are not specifically required by law are very low and should not result in any businesses creating or losing jobs. The estimated compliance costs range from \$51 per year, per water system (.02 cents per employee hour) for the smallest businesses to \$153 per year, per water systems (.10 cents per employee hour) for the largest small business that must comply.

**Conclusion:** The impacts to the majority of small water systems are less than \$51 and below the minor threshold amount of \$100 for the proposed rule sections requiring preparation of an SBEIS. There are a few small water systems that will have costs exceeding \$100. DOH staff consulted with stakeholders, including small water system owners, throughout the rule development process. DOH incorporated provisions to minimize the cost of the rule for small water systems while still ensuring it meets the intent of the MWL.

A copy of the statement may be obtained by contacting Michelle K. Austin, P.O. Box 47822, Olympia, WA 98504-7822, phone (360) 236-3156, fax (360) 236-2253, e-mail michelle.austin@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Michelle K. Austin, P.O. Box 47822, Olympia, WA 98504-7822, phone (360) 236-3156, fax (360) 236-2253, e-mail michelle.austin@doh.wa.gov.

September 24, 2007

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-002 Guidance.** (1) The department has numerous guidance documents available to help purveyors comply with state and federal rules regarding drinking water. These include documents on the following subjects:

- (a) Compliance;
- (b) ~~((System management and financial assistance;~~
- ~~(c) Ground water protection;~~
- ~~(d) Growth management;~~
- ~~(e) Operations/maintenance;~~
- ~~(f) Operator certification;~~
- ~~(g) Water system planning;~~
- ~~(h) Monitoring and water quality;~~
- ~~(i) System approval;~~
- ~~(j) Small water systems;~~
- ~~(k) Water resources;~~
- ~~(l) Water system design; and~~

~~(m) General information;)) Consumer and public education;~~

~~(c) Contaminants;~~

~~(d) Cross-connection control and backflow prevention;~~

~~(e) Emergency response and drinking water security;~~

~~(f) Engineering design and water treatment;~~

~~(g) Financial assistance and state revolving fund (SRF);~~

~~(h) General information;~~

~~(i) Ground water protection;~~

~~(j) Growth management;~~

~~(k) Operations and maintenance;~~

~~(l) Operator certification;~~

~~(m) Planning and financial viability;~~

~~(n) Regulations;~~

~~(o) Small water systems;~~

~~(p) System approval;~~

~~(q) Water quality monitoring and source protection;~~

~~(r) Water system planning; and~~

~~(s) Water use efficiency.~~

(2) The department's guidance documents are available at minimal or no cost by contacting the ~~((division))~~ office of drinking water's publication service at ~~((360) 236-3099)~~ 360-236-3100 or ~~((6))800((3))-521-0323~~. Individuals can also request the documents via the internet at <http://www.doh.wa.gov/ehp/dw> or through conventional mail at P.O. Box 47822, Olympia, Washington 98504-7822.

(3) Federal guidance documents are available from the Environmental Protection Agency (EPA) for a wide range of topics. These are available from the EPA Office of Ground Water and Drinking Water web site at [www.epa.gov/safewater/index.html](http://www.epa.gov/safewater/index.html).

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

**WAC 246-290-010 Definitions.** Abbreviations and acronyms:

**ADD** - average day demand;

**AG** - air gap;

**ANSI** - American National Standards Institute;

~~((APWA—American Public Works Association;~~

~~ASCE—American Society of Civil Engineers;))~~

**AVB** - atmospheric vacuum breaker;

**AWWA** - American Water Works Association;

~~((BAT—best available technology;))~~

**BAT** - backflow assembly tester (for WAC ~~((246-29-490))~~ 246-290-490);

**C** - residual disinfectant concentration in mg/L;

**CCS** - cross-connection control specialist;

**CFR** - code of federal regulations;

**CPE** - comprehensive performance evaluation;

**CT** - the mathematical product in mg/L - minutes of "C" and "T";

**CTA** - comprehensive technical assistance;

**CWSSA** - critical water supply service area;

**DBPs** - disinfection by-products;

**DCDA** - double check detector assembly;

**DCVA** - double check valve assembly;

**DVGW** - Deutsche Vereinigung des Gas und Wasserfaches;

**EPA** - Environmental Protection Agency;  
**ERU** - equivalent residential unit;  
**gph** - gallons per hour;  
**gpm** - gallons per minute;  
**GAC** - granular activated carbon;  
**GAC10** - granular activated carbon with ten-minute empty bed contact time based on average daily flow and one hundred eighty-day reactivation frequency;  
**GW** - ground water under the direct influence of surface water;  
**HAA5** - haloacetic acids (five);  
**HPC** - heterotrophic plate count;  
**IAPMO** - International Association of Plumbing and Mechanical Officials;  
**IBC** - International Building Code (formerly known as the Uniform Building Code (UBC));  
**kPa** - kilo pascal (SI units of pressure);  
**MCL** - maximum contaminant level;  
**MDD** - maximum day demand;  
**mg/L** - milligrams per liter (1 mg/L = 1 ppm);  
**mL** - milliliter;  
**mm** - millimeter;  
**MRDL** - maximum residual disinfectant level;  
**MRDLG** - maximum residual disinfectant level goal;  
**MTTP** - maximum total trihalomethane potential;  
**NSF** - NSF International (formerly known as the National Sanitation Foundation (NSF));  
**NTNC** - nontransient **noncommunity**;  
**NTU** - nephelometric turbidity unit;  
**ONORM** - Osterreichisches Normungsinstitut;  
**PAA** - project approval application;  
**pCi/L** - picocuries per liter;  
**PHD** - peak hourly demand;  
**ppm** - parts per million (1 ppm = 1 mg/L);  
**psi** - pounds per square inch;  
**PVBA** - pressure vacuum breaker assembly;  
**RPBA** - reduced pressure backflow assembly;  
**RPDA** - reduced pressure detector assembly;  
**SAL** - state advisory level;  
**SCA** - sanitary control area;  
**SDWA** - Safe Drinking Water Act;  
**SEPA** - State Environmental Policy Act;  
**SOC** - synthetic organic chemical;  
**SMA** - satellite management agency;  
**SPI** - special purpose investigation;  
**SRF** - state revolving fund;  
**SUVA** - specific ultraviolet absorption;  
**SVBA** - spill resistant vacuum breaker assembly;  
**SWTR** - surface water treatment rule;  
**T** - disinfectant contact time in minutes;  
**TTHM** - total trihalomethane;  
**TNC** - transient **noncommunity**;  
**TNTC** - too numerous to count;  
**TOC** - total organic carbon;  
~~(**UBC** - Uniform Building Code;)~~  
**ug/L** - micrograms per liter;  
**UL** - Underwriters Laboratories, Inc.;  
**umhos/cm** - micromhos per centimeter;  
**UPC** - Uniform Plumbing Code;  
**UTC** - utilities and transportation commission;

**VOC** - volatile organic chemical;  
**WAC** - Washington Administrative Code;  
**WFI** - water facilities inventory (~~(and report)~~) form;  
**WHPA** - wellhead protection area; and  
**WUE** - water use efficiency.

"**Acute**" means posing an immediate risk to human health.

"~~(Alternate)~~ **Alternative filtration technology**" means a filtration process for substantial removal of particulates (generally > 2 log *Giardia lamblia* cysts and ≥ 2-log removal of *Cryptosporidium* oocysts) by other than conventional, direct, diatomaceous earth, or slow sand filtration processes.

"**Analogous treatment system**" means an existing water treatment system that has unit processes and source water quality characteristics that are similar to a proposed treatment system.

"**Approved air gap**" means a physical separation between the free-flowing end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel. To be an air gap approved by the department, the separation must be at least:

Twice the diameter of the supply piping measured vertically from the overflow rim of the receiving vessel, and in no case be less than one inch, when unaffected by vertical surfaces (sidewalls); and:

Three times the diameter of the supply piping, if the horizontal distance between the supply pipe and a vertical surface (sidewall) is less than or equal to three times the diameter of the supply pipe, or if the horizontal distance between the supply pipe and intersecting vertical surfaces (sidewalls) is less than or equal to four times the diameter of the supply pipe and in no case less than one and one-half inches.

"**Approved atmospheric vacuum breaker (AVB)**" means an AVB of make, model, and size that is approved by the department. AVBs that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or that are listed or approved by other nationally recognized testing agencies (such as IAPMO, ANSI, or UL) acceptable to the ~~(local administrative)~~ authority having jurisdiction are considered approved by the department.

"**Approved backflow preventer**" means an approved air gap, an approved backflow prevention assembly, or an approved AVB. The terms "approved backflow preventer," "approved air gap," or "approved backflow prevention assembly" refer only to those approved backflow preventers relied upon by the purveyor for the protection of the public water system. The requirements of WAC 246-290-490 do not apply to backflow preventers installed for other purposes.

"**Approved backflow prevention assembly**" means an RPBA, RPDA, DCVA, DCDA, PVBA, or SVBA of make, model, and size that is approved by the department. Assemblies that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or other entity acceptable to the department are considered approved by the department.

**"As-built drawing"** means the drawing created by an engineer from the collection of the original design plans, including changes made to the design or to the system, that reflects the actual constructed condition of the water system.

**"Authority having jurisdiction"** (formerly known as local administrative authority) means the local official, board, department, or agency authorized to administer and enforce the provisions of the Uniform Plumbing Code as adopted under chapter 19.27 RCW.

**"Authorized agent"** means any person who:

Makes decisions regarding the operation and management of a public water system whether or not he or she is engaged in the physical operation of the system;

Makes decisions whether to improve, expand, purchase, or sell the system; or

Has discretion over the finances of the system.

**"Authorized consumption"** means the volume of metered and unmetered water used for municipal water supply purposes by consumers, the purveyor, and others authorized to do so by the purveyor, including, but not limited to, fire fighting and training, flushing of mains and sewers, street cleaning, and watering of parks and landscapes. These volumes may be billed or unbilled.

**"Average day demand (ADD)"** means the total quantity of water use from all sources of supply as measured or estimated over a calendar year divided by three hundred sixty-five. ADD is typically expressed as gallons per day (gpd) per equivalent residential unit (ERU) ( $\frac{\text{gpd}}{\text{ERU}}$ ).

**"Backflow"** means the undesirable reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

**"Backflow assembly tester"** means a person holding a valid BAT certificate issued ~~((in accordance with))~~ under chapter 246-292 WAC.

**"Backflow preventers"** means either:

(a) A premises isolation backflow preventer; or

(b) An in-premises backflow preventer or preventers, when no premises isolation backflow preventer is installed.

**"Backpressure"** means a pressure (caused by a pump, elevated tank or piping, boiler, or other means) on the consumer's side of the service connection that is greater than the pressure provided by the public water system and which may cause backflow.

**"Backsiphonage"** means backflow due to a reduction in system pressure in the purveyor's distribution system and/or consumer's water system.

**"Bag filter"** means a pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

**"Bank filtration"** means a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

**"Best available technology ((BAT))"** means the best technology, treatment techniques, or other means that EPA

finds, after examination for efficacy under field conditions, are available, taking cost into consideration.

**"Blended sample"** means a sample collected from two or more individual sources at a point downstream of the confluence of the individual sources and prior to the first connection.

**"C"** means the residual disinfectant concentration in mg/L at a point before or at the first consumer.

**"Cartridge filter"** means a pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

**"Category red operating permit"** means an operating permit identified under chapter 246-294 WAC. Placement in this category results in permit issuance with conditions and a determination that the system is inadequate.

**"Chemical contaminant treatment facility"** means a treatment facility specifically used for the purpose of removing chemical contaminants.

**"Clarification"** means a treatment process that uses gravity (sedimentation) or dissolved air (flotation) to remove flocculated particles.

**"Closed system"** means any water system or portion of a water system in which water is transferred to a higher pressure zone closed to the atmosphere, such as when no gravity storage is present.

**"Coagulant"** means a chemical used in water treatment to destabilize particulates and accelerate the rate at which they aggregate into larger particles.

**"Coagulation"** means a process using coagulant chemicals and rapid mixing to destabilize colloidal and suspended particles and agglomerate them into flocs.

**"Combination fire protection system"** means a fire sprinkler system that:

Is supplied only by the purveyor's water;

Does not have a fire department pumper connection; and

Is constructed of approved potable water piping and materials that serve both the fire sprinkler system and the consumer's potable water system.

**"Completely treated water"** means water from a surface or ground water under the direct influence of surface water (GWI) source that receives filtration or disinfection treatment that fully complies with the treatment technique requirements of Part 6 of this chapter as determined by the department.

**"Composite sample"** means a sample in which more than one source is sampled individually by the water system and then composited by a certified laboratory by mixing equal parts of water from each source (up to five different sources) and then analyzed as a single sample.

**"Comprehensive monitoring plan"** means a schedule that describes both the frequency and appropriate locations for sampling of drinking water contaminants as required by state and federal rules.

**"Comprehensive performance evaluation (CPE)"** means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to

identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The comprehensive performance evaluation must consist of at least the following components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

**"Comprehensive technical assistance (CTA)"** means technical assistance intended to identify specific steps that may help a water treatment plant overcome operational or design limitations identified during a comprehensive performance evaluation.

**"Confirmation"** means to demonstrate the accuracy of results of a sample by analyzing another sample from the same location within a reasonable period of time, generally not to exceed two weeks. Confirmation is when analysis results fall within plus or minus thirty percent of the original sample results.

**"Confluent growth"** means a continuous bacterial growth covering a portion or the entire filtration area of a membrane filter in which bacterial colonies are not discrete.

**"Construction completion report"** means a form provided by the department and completed for each specific construction project to document:

- Project construction in accordance with this chapter and general standards of engineering practice;
- Physical capacity changes; and
- Satisfactory test results.

The completed form must be stamped with an engineer's seal, and signed and dated by a professional engineer.

**"Consumer"** means any person receiving water from a public water system from either the meter, or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

**"Consumer's water system,"** as used in WAC 246-290-490, means any potable and/or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

**"Contaminant"** means a substance present in drinking water that may adversely affect the health of the consumer or the aesthetic qualities of the water.

**"Contingency plan"** means that portion of the wellhead protection program section of the water system plan or small water system management program that addresses the replacement of the major well(s) or wellfield in the event of loss due to ground water contamination.

**"Continuous monitoring"** means determining water quality with automatic recording analyzers that operate without interruption twenty-four hours per day.

**"Conventional filtration treatment"** means a series of processes including coagulation, flocculation, clarification,

and filtration that together result in substantial particulate removal in compliance with Part 6 of this chapter.

**"Cost-effective"** means the benefits exceed the costs.

**"Council"** means the Washington state building code council under WAC 51-04-015(2).

**"Critical water supply service area (CWSSA)"** means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

**"Cross-connection"** means any actual or potential physical connection between a public water system or the consumer's water system and any source of nonpotable liquid, solid, or gas that could contaminate the potable water supply by backflow.

**"Cross-connection control program"** means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

**"Cross-connection control specialist"** means a person holding a valid CCS certificate issued (~~in accordance with~~) under chapter 246-292 WAC.

**"Cross-connection control summary report"** means the annual report that describes the status of the purveyor's cross-connection control program.

**"CT"** or **"CTcalc"** means the product of "residual disinfectant concentration" (C) and the corresponding "disinfectant contact time" (T) i.e., "C" x "T."

**"CT<sub>99.9</sub>"** means the CT value required for 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts.

**"CTreq"** means the CT value a system shall provide to achieve a specific percent inactivation of *Giardia lamblia* cysts or other pathogenic organisms of health concern as directed by the department.

**"Curtailement"** means short-term, infrequent actions by a purveyor and its consumers to reduce their water use during or in anticipation of a water shortage.

**"Dead storage"** means the volume of stored water not available to all consumers at the minimum design pressure (~~in accordance with~~) under WAC 246-290-230 (5) and (6).

**"Demand forecast"** means an estimate of future water system water supply needs assuming historically normal weather conditions and calculated using numerous parameters, including population, historic water use, local land use plans, water rates and their impacts on consumption, employment, projected water use efficiency savings from implementation of a water use efficiency program, and other appropriate factors.

**"Department"** means the Washington state department of health or health officer as identified in a joint plan of operation (~~in accordance with~~) under WAC 246-290-030(1).

**"Design and construction standards"** means department design guidance and other peer reviewed documents generally accepted by the engineering profession as containing fundamental criteria for design and construction of water facility projects. Design and construction standards are comprised of performance and sizing criteria and reference general construction materials and methods.

**"Diatomaceous earth filtration"** means a filtration process for substantial removal of particulates ( $> 2 \log$  *Giardia lamblia* cysts) in which:

A precoat cake of graded diatomaceous earth filter media is deposited on a support membrane (septum); and

Water is passed through the cake on the septum while additional filter media, known as body feed, is continuously added to the feed water to maintain the permeability of the filter cake.

**"Direct filtration"** means a series of processes including coagulation, flocculation, and filtration (but excluding sedimentation) that together result in substantial particulate removal in compliance with Part 6 of this chapter.

**"Direct service connection"** means a service hookup to a property that is contiguous to a water distribution main and where additional distribution mains or extensions are not needed to provide service.

**"Disinfectant contact time (T in CT)"** means: When measuring the first or only C, the time in minutes it takes water to move from the point of disinfectant application to a point where the C is measured; and

For subsequent measurements of C, the time in minutes it takes water to move from one C measurement point to the C measurement point for which the particular T is being calculated.

**"Disinfection"** means the use of chlorine or other agent or process the department approves for killing or inactivating microbiological organisms, including pathogenic and indicator organisms.

**"Disinfection profile"** means a summary of *Giardia lamblia* inactivation through a surface water treatment plant.

**"Distribution coliform sample"** means a sample of water collected from a representative location in the distribution system at or after the first service and analyzed for coliform presence in compliance with this chapter.

**"Distribution-related projects"** means distribution projects such as storage tanks, booster pump facilities, transmission mains, pipe linings, and tank coating. It does not mean source of supply (including interties) or water quality treatment projects.

~~("Distribution reservoir" means a water storage structure that is integrated with a water system's distribution network to provide for variable system demands including, but not limited to, daily equalizing storage, standby storage, or fire reserves, or to provide for disinfectant contact time.)~~

**"Distribution system"** means all piping components of a public water system that serve to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

**"Domestic or other nondistribution system plumbing problem,"** means contamination of a system having more than one service connection with the contamination limited to the specific service connection from which the sample was taken.

~~("Drinking water state revolving fund (DWSRF)" means the revolving loan program financed by the state and federal governments and managed by the state for the purpose of assisting water systems to meet their capital needs associated with complying with the federal Safe Drinking Water Act.)~~

**"Duplicate (verification) sample"** means a second sample collected at the same time and location as the first sample and used for verification.

**"Elected governing board"** means the elected officers with ultimate legal responsibility for operational, technical, managerial, and financial decisions for a public water system.

**"Emergency"** means an unforeseen event that causes damage or disrupts normal operations and requires immediate action to protect public health and safety.

**"Emergency source"** means any source that is approved by the department for emergency purposes only, is not used for routine or seasonal water demands, is physically disconnected, and is identified in the purveyor's emergency response plan.

**"Engineering design review report"** means a form provided by the department and completed for a specific distribution-related project to document:

- Engineering review of a project report and/or construction documents under the submittal exception process in ~~(accordance with)~~ WAC 246-290-125(3); and
- Design in accordance with this chapter and general standards of engineering practice.

The completed form must be stamped with engineer's seal, and signed and dated by a professional engineer.

**"Equalizing storage"** means the volume of storage needed to supplement supply to consumers when the peak hourly demand exceeds the total source pumping capacity.

**"Equivalent residential unit (ERU)"** means a system-specific unit of measure used to express the amount of water consumed by a typical full-time single family residence.

**"Existing service area"** means a specific area within which direct service or retail service connections to customers of a public water system are currently available.

**"Expanding public water system"** means a public water system installing additions, extensions, changes, or alterations to their existing source, transmission, storage, or distribution facilities that will enable the system to increase in size its existing service area and/or its number of approved service connections. Exceptions:

A system that connects new approved individual retail or direct service connections onto an existing distribution system within an existing service area; or

A distribution system extension in an existing service area identified in a current and approved water system plan or project report.

**"Filter profile"** means a graphical representation of individual filter performance in a direct or conventional surface water filtration plant, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

**"Filtration"** means a process for removal of particulate matter from water by passage through porous media.

**"Financial viability"** means the capability of a water system to obtain sufficient funds to construct, operate, maintain, and manage a public water system, on a continuing basis, in full compliance with federal, state, and local requirements.

**"Finished water"** means the water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

**"Finished water storage facility"** means a water storage structure that is integrated with a water system's distribution network to provide for variable system demands including, but not limited to, daily equalizing storage, standby storage, or fire reserves, or to provide for disinfectant contact time.

**"Fire flow"** means the maximum rate and duration of water flow needed to suppress a fire under WAC 246-293-640 or as required under local fire protection authority standards.

**"Fire suppression storage"** means the volume of stored water available during fire suppression activities to satisfy minimum pressure requirements per WAC 246-290-230.

**"First consumer"** means the first service connection associated with any source (i.e., the point where water is first withdrawn for human consumption, excluding connections where water is delivered to another water system covered by these regulations).

**"Flocculation"** means a process enhancing agglomeration and collection of colloidal and suspended particles into larger, more easily settleable or filterable particles by gentle stirring.

**"Flowing stream"** means a course of running water flowing in a definite channel.

**"Flow-through fire protection system"** means a fire sprinkler system that:

Is supplied only by the purveyor's water;

Does not have a fire department pumper connection;

Is constructed of approved potable water piping and materials to which sprinkler heads are attached; and

Terminates at a connection to a toilet or other plumbing fixture to prevent the water from becoming stagnant.

**"Forecasted demand characteristics"** means the factors that may affect a public water system's projected water needs.

**"Future service area"** means a specific area for which water service is planned by a public water system, as determined by written agreement between purveyors provided for in WAC 246-293-250.

**"Governing body"** means the individual or group of individuals with ultimate legal responsibility for operational, technical, managerial, and financial decisions for a public water system.

**"Grab sample"** means a water quality sample collected at a specific instant in time and analyzed as an individual sample.

**"Ground water under the direct influence of surface water (GWI)"** means any water beneath the surface of the ground that the department determines has the following characteristics:

Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or, *Cryptosporidium*; or

Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

**"Guideline"** means a department document assisting the purveyor in meeting a rule requirement.

**"Health officer"** means the health officer of the city, county, city-county health department or district, or an authorized representative.

**"Heterotrophic Plate Count (HPC)"** means a procedure to measure a class of bacteria that use organic nutrients for growth. The density of these bacteria in drinking water is measured as colony forming units per milliliter and is referred to as the HPC.

**"High health cross-connection hazard"** means a cross-connection (~~(which)~~) involving any substance that could impair the quality of potable water and create an actual public health hazard through injury, poisoning, or spread of disease (~~(by sewage, industrial liquids or waste)~~).

**"Human consumption"** means the use of water for drinking, bathing or showering, hand washing, food preparation, cooking, or oral hygiene.

**"Hydraulic analysis"** means the study of a water system's distribution main and storage network to determine present or future adequacy for provision of service to consumers within the established design parameters for the system under peak flow conditions, including fire flow. The analysis is used to establish any need for improvements to existing systems or to substantiate adequacy of design for distribution system components such as piping, elevated storage, booster stations or similar facilities used to pump and convey water to consumers.

**"Inactivation"** means a process which renders pathogenic microorganisms incapable of producing disease.

**"Inactivation ratio"** means the ratio obtained by dividing CTcalc by CTreq.

**"Incompletely treated water"** means water from a surface or GWI source that receives filtration and/or disinfection treatment that does not fully comply with the treatment technique requirements of Part 6 of this chapter as determined by the department.

**"In-line filtration"** means a series of processes, including coagulation and filtration (but excluding flocculation and sedimentation) that together result in particulate removal.

**"In-premises protection"** means a method of protecting the health of consumers served by the consumer's potable water system, located within the property lines of the consumer's premises by the installation of an approved air gap or backflow prevention assembly at the point of hazard, which is generally a plumbing fixture.

**"Intertie"** means an interconnection between public water systems permitting the exchange or delivery of water between those systems.

**"Lake or reservoir"** means a natural or man-made basin or hollow on the earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

**"Legionella"** means a genus of bacteria containing species which cause a type of pneumonia called Legionnaires' Disease.

**"Limited alternative to filtration"** means a process that ensures greater removal and/or inactivation efficiencies of pathogenic organisms than would be achieved by the combination of filtration and chlorine disinfection.

~~("Local administrative authority" means the local official, board, department, or agency authorized to administer and enforce the provisions of the Uniform Plumbing Code as adopted under chapter 19.27 RCW.)~~

**"Low ((health)) cross-connection hazard"** means a cross-connection that could cause an impairment of the quality of potable water to a degree that does not create a hazard to the public health, but does adversely and unreasonably affect the aesthetic qualities of potable waters for domestic use.

**"Major project"** means all construction projects subject to ~~((SEPA in accordance with))~~ the State Environmental Policy Act (SEPA) under WAC 246-03-030 (3)(a) and include all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet and larger than eight inches in diameter located in new rights of way and major extensions to existing water distribution systems involving use of pipes greater than eight inches in diameter, that are designed to increase the existing service area by more than one square mile.

**"Mandatory curtailment"** means curtailment required by a public water system of specified water uses and consumer classes for a specified period of time.

**"Marginal costs"** means the costs incurred by producing the next increment of supply.

**"Maximum contaminant level (MCL)"** means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table 3.

**"Maximum contaminant level violation"** means a confirmed measurement above the MCL and for a duration of time, where applicable, as outlined under WAC 246-290-310.

**"Maximum day demand (MDD)"** means the highest actual or estimated quantity of water that is, or is expected to be, used over a twenty-four hour period, excluding unusual events or emergencies. MDD is typically expressed as gallons per day per ERU (gpd/ERU).

**"Membrane filtration"** means a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

**"Monitoring waiver"** means an action taken by the department under WAC 246-290-300 (4)(g) or ~~((7))~~ (8)(f) to allow a water system to reduce specific monitoring requirements based on a determination of low source vulnerability to contamination.

**"Municipal water supplier"** means an entity that supplies water for municipal water supply purposes.

**"Municipal water supply purposes"** means a beneficial use of water:

(a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year;

(b) For governmental or governmental proprietary purposes by a city, town, public utility, district, county, sewer district, or water district; or

(c) Indirectly for the purposes in (a) or (b) of this definition through the delivery of treated or raw water to a public water system for ~~((such))~~ beneficial use.

(i) If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this definition, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes; and

(ii) If a governmental entity holds a water right that is for the purposes listed in (a), (b), or (c) of this definition, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

**"Nested storage"** means one component of storage is contained within the component of another.

**"Nonacute"** means posing a possible or less than immediate risk to human health.

**"Nonresident"** means a person having access to drinking water from a public water system, but who lives elsewhere. Examples include travelers, transients, employees, students, etc.

**"Normal operating conditions"** means those conditions associated with the designed, day-to-day provision of potable drinking water that meets regulatory water quality standards and the routine service expectations of the system's consumers at all times, including meeting fire flow demands. Operation under conditions such as power outages, floods, or unscheduled transmission or distribution disruptions, even if considered in the system design, are considered abnormal.

**"Operational storage"** means the volume of distribution storage associated with source or booster pump normal cycling times under normal operating conditions and is additive to the equalizing and standby storage components, and to fire flow storage if this storage component exists for any given tank.

**"Peak hourly demand (PHD)"** means the maximum rate of water use, excluding fire flow, that can be expected to occur within a defined service area over a continuous sixty minute time period. PHD is typically expressed in gallons per minute (gpm).



**"Peak hourly flow"** means, for the purpose of CT calculations, the greatest volume of water passing through the system during any one hour in a day.

**"Performance criteria"** means the level at which a system shall operate in order to maintain system reliability compliance, in accordance with WAC 246-290-420, and to meet consumers' reasonable expectations.

**"Permanent residence"** means any dwelling that is, or could reasonably be expected to be, occupied on a continuous basis.

**"Permanent source"** means a public water system supply source that is used regularly each year, and based on expected operational requirements of the system, will be used more than three consecutive months in any twelve-month period. For seasonal water systems that are in operation for less than three consecutive months per year, their sources shall also be considered to be permanent.

**"Plant intake"** means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

**"Point of disinfectant application"** means the point where the disinfectant is added, and where water downstream of that point is not subject to contamination by untreated surface water.

**"Population served"** means the number of persons, resident and nonresident, having immediate access to drinking water from a public water system, whether or not persons have actually consumed water from that system. The number of nonresidents shall be the average number of persons having immediate access to drinking water on days access was provided during that month. In the absence of specific population data, the number of residents shall be computed by multiplying the number of active services by two and one-half.

**"Potable"** means water suitable for drinking by the public.

**"Potential GWI"** means a source identified by the department as possibly under the influence of surface water, and includes, but is not limited to, all wells with a screened interval fifty feet or less from the ground surface at the wellhead and located within two hundred feet of a surface water, and all Ranney wells, infiltration galleries, and springs.

**"Premises isolation"** means a method of protecting a public water system by installation of approved air gaps or approved backflow prevention assemblies at or near the service connection or alternative location acceptable to the purveyor to isolate the consumer's water system from the purveyor's distribution system.

**"Presedimentation"** means a preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

**"Pressure filter"** means an enclosed vessel containing properly sized and graded granular media through which water is forced under greater than atmospheric pressure.

**"Primary disinfection"** means a treatment process for achieving inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern to com-

ply with the treatment technique requirements of Part 6 of this chapter.

**"Primary standards"** means standards based on chronic, nonacute, or acute human health effects.

**"Primary turbidity standard"** means an accurately prepared formazin solution or commercially prepared polymer solution of known turbidity (prepared in accordance with "standard methods") that is used to calibrate bench model and continuous turbidimeters (instruments used to measure turbidity).

**"Project approval application (PAA)"** means a department form documenting ownership of water system, design engineer for the project, and type of project.

**"Protected ground water source"** means a ground water source the purveyor shows to the department's satisfaction as protected from potential sources of contamination on the basis of hydrogeologic data and/or satisfactory water quality history.

**"Public forum"** means a meeting open to the general public that allows for their participation.

**"Public water system"** is defined and referenced under WAC 246-290-020.

**"Purchased source"** means water a purveyor purchases from a public water system not under the control of the purveyor for distribution to the purveyor's consumers.

**"Purveyor"** means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

**"Reclaimed water"** means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for beneficial use or a controlled use that would not otherwise occur, and it is no longer considered wastewater.

**"Record drawings"** means the drawings bearing the seal and signature of a professional engineer that reflect the modifications made to construction documents, documenting actual constructed conditions of the water system facilities.

**"Recreational tract"** means an area that is clearly defined for each occupant, but has no permanent structures with internal plumbing, and the area has been declared in the covenants or on the recorded plat in order to be eligible for reduced design considerations.

**"Regional public water supplier"** means a water system that provides drinking water to one, or more, other public water systems.

**"Regularly"** means four hours or more per day for four days or more per week.

**"Removal credit"** means the level (expressed as a percent or log) of *Giardia* and virus removal the department grants a system's filtration process.

**"Repeat sample"** means a sample collected to confirm the results of a previous analysis.

**"Resident"** means an individual living in a dwelling unit served by a public water system.

**"Residual disinfectant concentration"** means the analytical level of a disinfectant, measured in milligrams per

liter, that remains in water following the application (dosing) of the disinfectant after some period of contact time.

**"Retail service area"** means the specific area defined by the municipal water supplier where the municipal water supplier has a duty to provide service to all new service connections.

**"Same farm"** means a parcel of land or series of parcels that are connected by covenants and devoted to the production of livestock or agricultural commodities for commercial purposes and does not qualify as a **Group A** public water system.

**"Sanitary survey"** means a review, inspection, and assessment of a public water system by the department or department designee including, but not limited to: Source, facilities, equipment, administration and operation, maintenance procedures, monitoring, recordkeeping, planning documents and schedules, and management practices. The purpose of the survey is to evaluate the adequacy of the water system for producing and distributing safe and adequate drinking water.

**"Satellite management agency (SMA)"** means a person or entity that is approved by the department to own or operate public water systems on a regional or county-wide basis without the necessity for a physical connection between the systems.

**"Seasonal source"** means a public water system source used on a regular basis, that is not a permanent or emergency source.

**"Secondary standards"** means standards based on factors other than health effects.

**"Service area"** means the specific area or areas a water system currently serves or plans to provide water service. This may be comprised of the existing, retail, future, and wholesale service areas.

**"Service connection"** means a connection to a public water system designed to provide potable water to a single family residence, or other residential or nonresidential population. When the connection provides water to a residential population without clearly defined single family residences, the following formulas shall be used in determining the number of services to be included as residential connections on the WFI form:

Divide the average population served each day by two and one-half; or

Using actual water use data, calculate the total ERUs represented by the service connection in accordance with department design guidance.

In no case shall the calculated number of services be less than one.

**"Severe health cross-connection hazard"** means a cross-connection which could impair the quality of potable water and create an immediate, severe public health hazard through poisoning or spread of disease by contaminants from radioactive material processing plants, nuclear reactors, or wastewater treatment plants.

**"Significant noncomplier"** means a system that is violating or has violated department rules, and the violations may create, or have created an imminent or a significant risk to human health. The violations include, but are not limited to, repeated violations of monitoring requirements, failure to

address an exceedance of permissible levels of regulated contaminants, or failure to comply with treatment technique standards or requirements.

**"Simple disinfection"** means any form of disinfection that requires minimal operational control in order to maintain the disinfection at proper functional levels, and that does not pose safety concerns that would require special care, equipment, or expertise. Examples include hypochlorination, UV-light, contactor chlorination, or any other form of disinfection practice that is safe to use and easy to routinely operate and maintain.

**"Slow sand filtration"** means a process involving passage of source water through a bed of sand at low velocity (generally less than 0.10 gpm/ft<sup>2</sup>) that results in substantial particulate removal (> 2 log *Giardia lamblia* cysts) by physical and biological mechanisms.

**"Societal perspective"** means a point of view that includes a broad spectrum of public benefits, including, but not limited to, enhanced system reliability; savings that result from delaying, deferring, or minimizing capital costs; and environmental benefits such as increased water in streams, improvements in aquifer recharge and other environmental factors.

**"Source meter"** means a meter that measures total output of a water source over specific time periods.

**"Source water"** means untreated water that is not subject to recontamination by surface runoff and:

For unfiltered systems, enters the system immediately before the first point of disinfectant application; and

For filtered systems, enters immediately before the first treatment unit of a water treatment facility.

**"Special purpose investigation (SPI)"** means on-site inspection of a public water system by the department or designee to address a potential public health concern, regulatory violation, or consumer complaint.

**"Special purpose sample"** means a sample collected for reasons other than the monitoring compliance specified in this chapter.

**"Spring"** means a source of water where an aquifer comes in contact with the ground surface.

**"Standard methods"** means ~~(the 18th edition of)~~ the book, titled *Standard Methods for the Examination of Water and Waste Water*, jointly published by the American Public Health Association, American Water Works Association (AWWA), and Water Pollution Control Federation. This book is available through public libraries or may be ordered from AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235. The edition to be used is that specified by EPA for the relevant drinking water parameter in 40 CFR Part 141.

**"Standby storage"** means the volume of stored water available for use during a loss of source capacity, power, or similar short-term emergency.

**"State advisory level (SAL)"** means a level established by the department and state board of health for a contaminant without an existing MCL. The SAL represents a level that when exceeded, indicates the need for further assessment to determine if the chemical is an actual or potential threat to human health.

**"State board of health"** and **"board"** means the board created by RCW 43.20.030.

**"State building code"** means the codes adopted by and referenced in chapter 19.27 RCW; the state energy code; and any other codes so designated by the Washington state legislature as adopted and amended by the council.

**"State revolving fund (SRF)"** means the revolving loan program financed by the state and federal governments and managed by the state for the purpose of assisting water systems to meet their capital needs associated with complying with the federal Safe Drinking Water Act under chapter 246-296 WAC.

**"Subpart H System"** see definition for "surface water system."

**"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

**"Surface water system"** means a public water system that uses in whole, or in part, source water from a surface supply, or ((ground water under the direct influence of surface water-))GWI((3)) supply. This includes systems that operate surface water treatment facilities, and systems that purchase "completely treated water" (as defined in this subsection). A "surface water system" is also referred to as a "Subpart H System" in some federal regulatory language adopted by reference and the two terms are considered equivalent for the purposes of this chapter.

**"Susceptibility assessment"** means the completed Susceptibility Assessment Survey Form developed by the department to evaluate the hydrologic setting of the water source and assess its contribution to the source's overall susceptibility to contamination from surface activities.

**"Synthetic organic chemical (SOC)"** means a manufactured carbon-based chemical.

**"System capacity"** means the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

**"System physical capacity"** means the maximum number of service connections or equivalent residential units (ERUs) that the system can serve when considering the limitation of each system component such as source, treatment, storage, transmission, or distribution, individually and in combination with each other.

**"Time-of-travel"** means the time required for ground water to move through the water bearing zone from a specific point to a well.

**"Too numerous to count (TNTC)"** means the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

**"Tracer study"** means a field study conducted to determine the disinfectant contact time, T, provided by a water system component, such as a clearwell or storage reservoir, used for *Giardia lamblia* cyst and virus inactivation. The study involves introducing a tracer chemical at the inlet of the contact basin and measuring the resulting outlet tracer concentration as a function of time.

**"Transmission line"** means pipes used to convey water from source, storage, or treatment facilities to points of distribution or distribution mains, and from source facilities to treatment or storage facilities. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this trans-

mission main is clearly defined on the plans and no service connections are allowed along the transmission main.

**"Treatment technique requirement"** means a department-established requirement for a public water system to provide treatment, such as filtration or disinfection, as defined by specific design, operating, and monitoring requirements. A "treatment technique requirement" is established in lieu of a primary MCL when monitoring for the contaminant is not economically or technologically feasible.

**"Trihalomethane (THM)"** means one of a family of organic compounds, named as derivatives of methane, where three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure. THMs may occur when chlorine, a halogen, is added to water containing organic material and are generally found in water samples as disinfection by-products.

**"Turbidity event"** means a single day or series of consecutive days, not to exceed fourteen, when one or more turbidity measurement each day exceeds 5 NTU.

**"Two-stage lime softening"** means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

**"T10"** means the time it takes ten percent of the water passing through a system contact tank intended for use in the inactivation of *Giardia lamblia* cysts, viruses, and other microorganisms of public health concern, as determined from a tracer study conducted at peak hourly flow or from published engineering reports or guidance documents for similarly configured tanks.

**"Unapproved auxiliary water supply"** means a water supply (other than the purveyor's water supply) on or available to the consumer's premises that is either not approved for human consumption by the health agency having jurisdiction or is not otherwise acceptable to the purveyor.

~~("Uncovered distribution reservoir" means a distribution reservoir that is open, without a suitable water-tight roof or cover, where the potable water supply is exposed to external contaminants, including but not limited to people, birds, animals, and insects and will undergo no further treatment except for residual disinfection.)~~ **"Uncovered finished water storage facility"** means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere without a suitable water-tight roof or cover.

**"Uniform Plumbing Code"** means the code adopted under RCW 19.27.031(4) and ((amended)) implemented under chapter ((51-46)) 51-56 WAC. This code establishes statewide minimum plumbing standards applicable within the property lines of the consumer's premises.

**"Used water"** means water which has left the control of the purveyor.

**"Verification"** means to demonstrate the results of a sample to be precise by analyzing a duplicate sample. Verification occurs when analysis results fall within plus or minus thirty percent of the original sample.

**"Virus"** means a virus of fecal origin which is infectious to humans and transmitted through water.

**"Volatile organic chemical (VOC)"** means a manufactured carbon-based chemical that vaporizes quickly at standard pressure and temperature.

**"Voluntary curtailment"** means a curtailment of water use requested, but not required of consumers.

**"Waterborne disease outbreak"** means the significant occurrence of acute infectious illness, epidemiologically associated with drinking water from a public water system, as determined by the appropriate local health agency or the department.

**"Water demand efficiency"** means minimizing water use by the public water system's consumers through purveyor sponsored activities that may include, but are not limited to distributing water saving devices, providing rebates or incentives to promote water efficient technologies or by providing water audits to homes, businesses, or landscapes.

**"Water facilities inventory (WFI) form"** means the department form summarizing each public water system's characteristics.

**"Water right"** means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

**"Water right self-assessment"** means an evaluation of the legal ability of a water system to use water for existing or proposed usages in conformance with state water right laws. The assessment may be done by a water system, a purveyor, the department of ecology, or any combination thereof.

**"Watershed"** means the region or area that:

Ultimately drains into a surface water source diverted for drinking water supply; and

Affects the physical, chemical, microbiological, and radiological quality of the source.

**"Water shortage"** means a situation during which the water supplies of a system cannot meet normal water demands for the system, including peak periods.

**"Water shortage response plan"** means a plan outlining policies and activities to be implemented to reduce water use on a short-term basis during or in anticipation of a water shortage.

**"Water supply characteristics"** means the factors related to a public water system's source of water supply that may affect its availability and suitability to provide for both short-term and long-term needs. Factors include, but are not limited to, source location, name of any body of water and water resource inventory area from which water is diverted or withdrawn, production capacity, the source's natural variability, the system's water rights for the source, and other legal demands on the source such as water rights for other uses, conditions established to protect species listed under the Endangered Species Act in 50 CFR 17.11; instream flow restrictions established under Title 173 WAC, and any conditions established by watershed plans approved under chapter 90.82 RCW and RCW 90.54.040(1) or salmon recovery plans under chapter 77.85 RCW.

**"Water supply efficiency"** means increasing a public water system's transmission, storage and delivery potential through activities that may include, but are not limited to system-wide water audits, documenting authorized uses, con-

ducting leak surveys and repairs on meters, lines, storage facilities, and valves.

**"Water use efficiency (WUE)"** means increasing water supply efficiency and water demand efficiency to minimize water withdrawals and water use.

**"Water use efficiency program"** means policies and activities focusing on increasing water supply efficiency and water demand efficiency to minimize water withdrawals and water use.

**"Well field"** means a group of wells one purveyor owns or controls that:

Draw from the same aquifer or aquifers as determined by comparable inorganic chemical analysis and comparable static water level and top of the open interval elevations; and

Discharge water through a common pipe and the common pipe shall allow for collection of a single sample before the first distribution system connection.

**"Wellhead protection area (WHPA)"** means the portion of a well's, wellfield's or spring's zone of contribution defined (~~as such~~) using WHPA criteria established by the department.

**"Zone of contribution"** means the area surrounding a pumping well or spring that encompasses all areas or features that supply ground water recharge to the well or spring.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-020 Applicability.** (1) Public water system shall mean any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. (~~Such~~) This term includes:

(a) Collection, treatment, storage, and/or distribution facilities under control of the purveyor and used primarily in connection with (~~such~~) the system; and

(b) Collection or pretreatment storage facilities not under control of the purveyor, but primarily used in connection with (~~such~~) the system.

(2) The rules of this chapter shall apply to all **Group A** public water systems except those systems meeting all of the following conditions:

(a) Consists only of distribution and/or storage facilities and does not have any source or treatment facilities;

(b) Obtains all water from, but is not owned by, a public water system where the rules of this chapter apply;

(c) Does not sell water directly to any person; and

(d) Is not a passenger-conveying carrier in interstate commerce.

(3) **Group A** public water systems meeting all of the provisions under subsection (2) of this section may be required by the department to comply with such provisions of this chapter as are necessary to resolve a public health concern if the department determines a public health threat exists or is suspected.

(4) A **Group A** system shall be defined as a public water system providing service such that it meets the definition of a public water system provided in the 1996 amendments to the

federal Safe Drinking Water Act (Public Law 104-182, Section 101, subsection b).

(5) **Group A** water systems are further defined as **community** and **noncommunity** water systems.

(a) **Community** water system means any **Group A** water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents.

Examples of a **community** water system might include a municipality, subdivision, mobile home park, apartment complex, college with dormitories, nursing home, or prison.

(b) **Noncommunity** water system means a **Group A** water system that is not a **community** water system. **Noncommunity** water systems are further defined as:

(i) **Nontransient (NTNC)** water system that provides service opportunity to twenty-five or more of the same non-residential people for one hundred eighty or more days within a calendar year.

Examples of a **NTNC** water system might include a school, day care center, or a business, factory, motel, or restaurant with twenty-five or more employees on-site.

(ii) **Transient (TNC)** water system that serves:

(A) Twenty-five or more different people each day for sixty or more days within a calendar year;

(B) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or

(C) One thousand or more people for two or more consecutive days within a calendar year.

Examples of a **TNC** water system might include a restaurant, tavern, motel, campground, state or county park, an RV park, vacation cottages, highway rest area, fairground, public concert facility, special event facility, or church.

(c) A **Group B** water system is a public water system that does not meet the definition of a **Group A** water system. (See Table 1 and chapter 246-291 WAC for further explanation of a **Group B** water system.)

(6) A **Group A** system meeting more than one of the categories described in this section shall be classified by the department in the following order:

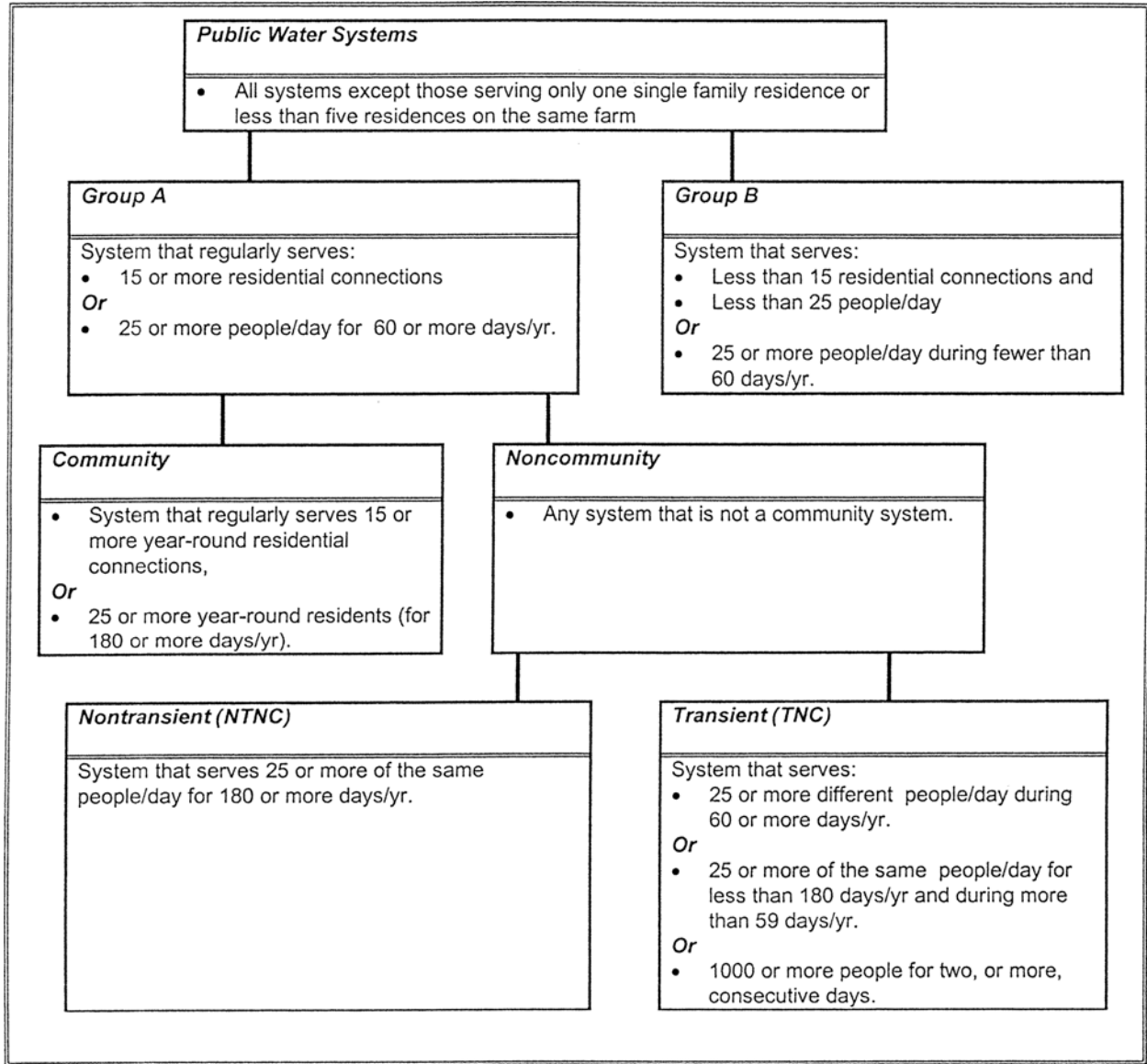
(a) **Community** water system;

(b) **NTNC** water system; or

(c) **TNC** water system.

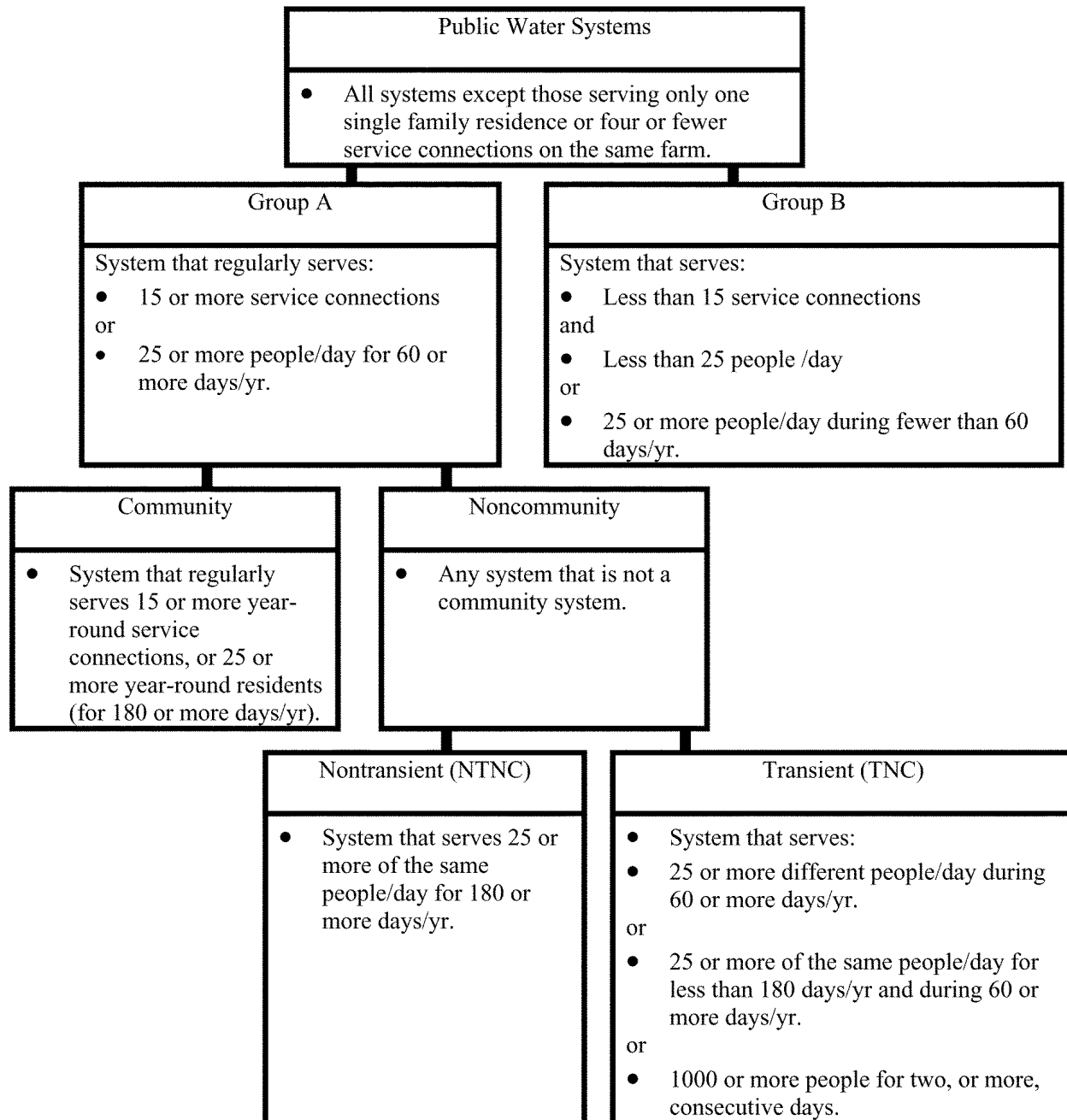
~~((Table 1))~~

~~((STRICKEN GRAPHIC))~~



~~STRICKEN GRAPHIC))~~

Table 1



AMENDATORY SECTION (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-025 Adoption by reference.** The following sections and subsections of Title 40 Code of Federal Regulations (CFR) Part 141 National Primary Drinking Water Regulations revised as of July 1, ((2003)) 2007, and including all amendments and modifications thereto effective as of the date of adoption of this chapter are adopted by reference:

141.2 Definitions. Only those definitions listed as follows:

- Action level;
- Corrosion inhibitor;
- Effective corrosion inhibitor residual;
- Enhanced coagulation;
- Enhanced softening;
- Granular activated carbon (GAC10);

Haloacetic acids (five) (HAA5); First draw sample; Large water system; Lead service line; Maximum residual disinfectant level (MRDL); Maximum residual disinfectant level goal (MRDLG); Medium-size water system; Optimal corrosion control treatment; Service line sample; Single family structure; Small water system; Specific ultraviolet absorption (SUVA); and Total Organic Carbon (TOC).	141.65(c)	Best Available Technologies (BATs) for Maximum Residual Disinfectant Levels.
141.12 Maximum contaminant levels for organic chemicals.	141.66	Maximum contaminant levels for radionuclides.
141.13 Maximum contaminant levels for turbidity.		Control of Lead and Copper
141.21 Coliform monitoring.	141.80	General requirements.
141.22 Turbidity sampling and analytical requirements.	141.81	Applicability of corrosion control treatment steps to small, medium-size and large water systems.
141.23(a) - 141.23(j), Inorganic chemical sampling, excluding (i)(2)	141.82(a) -	141.82(h) Description of corrosion control treatment requirements.
141.23(m) - 141.23(o)	141.83	Source water treatment requirements.
141.24(a) - 141.24(d), Organic chemicals other than total trihalomethanes.	141.84	Lead service line replacement requirements.
141.24 (f)(1) - 141.24 (f)(15), 141.24 (f)(18), 141.24 (f)(19), 141.24 (f)(21), 141.24 (f)(22)	141.85	Public education and supplemental monitoring requirements.
141.24 (g)(1) - 141.24 (g)(9), 141.24 (g)(12) - 141.24 (g)(14), 141.24 (h)(1) - 141.24 (h)(11), 141.24 (h)(14) - 141.24 (h)(17)	141.86 (a) - (f)	Monitoring requirements for lead and copper in tap water.
141.24 (h)(20)	141.87	Monitoring requirements for water quality parameters.
141.25(a), 141.25 (c) - (d), Analytical methods for radioactivity.	141.88	Monitoring requirements for lead and copper in source water.
141.26 Monitoring frequency and compliance for radioactivity in community water systems.	141.89	Analytical methods for lead and copper testing.
141.31(d) Reporting of public notices and compliance certifications.	141.90,	Reporting requirements.
141.33(e) Record maintenance of public notices and certifications.	excluding (a)(4)	
141.40(a) - 141.40(e), Special monitoring for inorganic and organic chemicals.	141.91	Recordkeeping requirements.
141.40(g), 141.40(i) - 141.40(n)		Disinfectants and Disinfection By-Products (D/DBP)
141.61 Maximum contaminant levels for organic contaminants.	141.130	General requirements.
141.62, Maximum contaminant levels for inorganic chemical and physical contaminants.	141.131	Analytical requirements.
141.64(c) Best Available Technologies (BATs) for Disinfection By-Products.	141.132	Monitoring requirements.
	141.133	Compliance.
	141.134	Reporting and recordkeeping.
	141.135	Treatment technique for control of disinfection by-product precursors.
		Enhanced Filtration - Reporting and Recordkeeping
	141.175(b)	Individual filter reporting and follow-up action requirements for systems treating surface water with conventional, direct, or in-line filtration and serving at least 10,000 people.
		<u>Subpart Q - Public Notification</u>
	141.201,	General public notification requirements.
	excluding (3)(ii) of Table 1	
	141.202,	Tier 1 Public Notice - Form, manner, and frequency of notice.
	excluding (3) of Table 1	
	141.203	Tier 2 Public Notice - Form, manner, and frequency of notice.



- 141.204 Tier 3 Public Notice - Form, manner, and frequency of notice.
- 141.205 Content of the public notice.
- 141.206 Notice to new billing units or new customers.
- 141.207 Special notice of the availability of unregulated contaminant monitoring results.
- 141.208 Special notice for exceedances of the SMCL for fluoride.

~~((Subpart Q - Public Notification Rule, Appendix A and B))~~

- 141.211 Special notice for *Cryptosporidium* monitoring failure.

Appendix A - NPDWR violations and situations requiring PN

Appendix B - Standard health effects language for PN

Subpart T - Enhanced Filtration and Disinfection - Systems Serving Fewer Than 10,000 People

- 141.530 - Disinfection profile and benchmark.
- 141.544
- 141.563 Follow-up actions required.
- 141.570, Reporting requirements.
- excluding (c)

Subpart W - Enhanced Treatment for *Cryptosporidium*

141.700-723 Enhanced Treatment for *Cryptosporidium*

Part 143 - National Secondary Drinking Water Regulations

- ~~143.1((-- Secondary contaminants--))~~ Purpose.
- ~~143.4~~
- 143.2 Definitions.
- 143.3 Secondary maximum contaminant levels.
- 143.4 Monitoring.

Copies of the incorporated sections and subsections of Title 40 CFR are available from the Department of Health, ~~((Air Industrial Center Building 3,))~~ P.O. Box 47822, Olympia, Washington 98504-7822, or by calling the department's drinking water hotline at ~~((4--))~~800-521-0323.

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

**WAC 246-290-100 Water system plan.** (1) The purpose of this section is to establish a uniform process for purveyors to:

(a) Demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with relevant local, state, and federal plans and regulations;

(b) Demonstrate how the system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans;

(c) Establish eligibility for funding under ~~((the drinking water state revolving fund (SRF)))~~ chapter 246-296 WAC.

(2) Purveyors of the following categories of community public water systems shall submit a water system plan for review and approval by the department:

(a) Systems having one thousand or more services;

(b) Systems required to develop water system plans under the Public Water System Coordination Act of 1977 (chapter 70.116 RCW);

(c) Any system experiencing problems related to planning, operation, and/or management as determined by the department;

(d) All new systems;

(e) Any expanding system; and

(f) Any system proposing to use the document submittal exception process in WAC 246-290-125.

(3) The purveyor shall work with the department ~~((and other parties))~~ to establish the level of detail for a water system plan. In general, the scope and detail of the plan will be related to size, complexity, water supply characteristics, forecasted demand characteristics, past performance, and use of the water system. Project reports may be combined with a water system plan.

(4) In order to demonstrate system capacity, the water system plan shall address the following elements, as a minimum, for a period of at least twenty years into the future:

(a) Description of the water system, including:

(i) Ownership and management, including the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system;

(ii) System history and background;

(iii) Related plans, such as coordinated water system plans, abbreviated coordinated water system plans, local land use plans, ground water management plans, and basin plans;

(iv) Service area maps, characteristics, agreements, and policies. Water systems must include their existing service area and future service area, if applicable. Municipal water suppliers must define their retail service area and meet the requirements under WAC 246-290-106. Municipal water suppliers must identify where their water rights place of use will be expanded to their service area if the requirements under WAC 246-290-107 for the expanded area have been met; and

(v) Satellite management, if applicable.

(b) Basic planning data, including:

(i) Current population, service connections, water use, and equivalent residential units; and

(ii) Sufficient water production and consumption data to identify trends including the following elements:

(A) Monthly and annual production totals for each source, including water purchased from another public water system;

(B) Annual usage totals for each customer class as determined by the purveyor;

(C) Annual usage totals for water supplied to other public water systems; and

(D) For systems serving one thousand or more total connections, a description of the seasonal variations in consumption patterns of each customer class defined by the purveyor.

(iii) ~~((Projected))~~ Designated land use, future population, and water demand for a consecutive six-year and twenty-year planning period within the system's retail service area and future service area, if applicable.

(c) Demand forecasts, developed under WAC 246-290-221, for a consecutive six-year and twenty-year planning

period. These shall show future use with and without savings expected from the system's water use efficiency program.

(d) For systems serving one thousand or more total connections, a demand forecast projecting demand if the measures deemed cost-effective per WAC 246-290-810 were implemented.

(e) System analysis, including:

- (i) System design standards;
- (ii) Water quality analysis;
- (iii) System inventory description and analysis; and
- (iv) Summary of system deficiencies.

(f) Water resource analysis, including:

(i) A water use efficiency program. Municipal water suppliers must meet the requirements in WAC 246-290-810;

(ii) Source of supply analysis, which includes:

(A) An evaluation of water supply alternatives if additional water rights will be pursued within twenty years; and

(B) A narrative description of the system's water supply characteristics and the foreseeable effect from current and future use on the water quantity and quality of any body of water from which its water is diverted or withdrawn based on existing data and studies;

(ii) A water shortage response plan ((if a water system experiences a water shortage, or anticipates it will experience a water shortage within the next six year planning period)) as a component of the reliability and emergency response requirements under WAC 246-290-420;

(iv) Water right self assessment;

(v) Water supply reliability analysis;

(vi) Interties; and

(vii) For systems serving one thousand or more total connections, an evaluation of opportunities for the use of reclaimed water, where they exist, as defined in RCW 90.46.010(4).

(g) Source water protection ~~((in accordance with))~~ under WAC 246-290-135.

(h) Operation and maintenance program ~~((in accordance with))~~ under WAC 246-290-415 and 246-290-654(5), as applicable.

(i) Improvement program, including a six-year capital improvement schedule.

(j) Financial program, including demonstration of financial viability by providing:

(i) A summary of past income and expenses;

(ii) A one-year balanced operational budget for systems serving one thousand or more connections or a six-year balanced operational budget for systems serving less than one thousand connections;

(iii) A plan for collecting the revenue necessary to maintain cash flow stability and to fund the capital improvement program and emergency improvements; and

(iv) An evaluation that has considered:

(A) The affordability of water rates; and

(B) The feasibility of adopting and implementing a rate structure that encourages water demand efficiency.

(k) Other documents, such as:

(i) Documentation of SEPA compliance;

(ii) Agreements; and

(iii) Comments from the county and adjacent utilities.

(5) Purveyors intending to implement the project report and construction document submittal exceptions authorized under WAC 246-290-125 must include:

(a) Standard construction specifications for distribution mains; and/or

(b) Design and construction standards for distribution-related projects, including:

(i) Description of project report and construction document internal review procedures, including engineering design review and construction completion reporting requirements;

(ii) Construction-related policies and requirements for external parties, including consumers and developers;

(iii) Performance and sizing criteria; and

(iv) General reference to construction materials and methods.

(6) The department, at its discretion, may require reports from purveyors identifying the progress in developing their water system plans.

(7) Purveyors shall transmit water system plans to adjacent utilities and local governments having jurisdiction, to assess consistency with ongoing and adopted planning efforts.

~~((For community systems, the purveyor shall hold an informational meeting for system consumers prior to departmental approval of a water system plan or a water system plan update. The purveyor shall notify consumers in a way that is appropriate to the size of the system.))~~ Prior to department approval of a water system plan or a water system plan update, the purveyor must:

(a) Hold an informational meeting for the water system consumers and notify consumers in a way that is appropriate to the size of the water system; and

(b) Obtain the approval of the water system plan from the governing body or elected governing board.

(9) Department approval of a water system plan shall be in effect for six years from the date of written approval unless:

(a) Major projects subject to SEPA as defined in WAC 246-03-030 (3)(a) are proposed that are not addressed in the plan;

(b) Changes occur in the basic planning data significantly affecting system improvements identified; or

(c) The department requests an updated plan or plan amendment.

(10) The purveyor shall update the plan and ~~((submit it for))~~ obtain department approval at least every six years. If the system no longer meets the conditions of subsection (2) of this section, the purveyor shall as directed by the department, either:

(a) Submit ((either)) a water system plan amendment for review and approval by the department with the scope ((of which will)) to be determined by the department((-)); or ((a small water system management program))

(b) Meet the requirements under WAC 246-290-105.

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

**WAC 246-290-105 Small water system management program.** (1) The purpose of a small water system management program is to:

(a) Demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations; and

(b) Establish eligibility for funding under ~~((the drinking water state revolving fund (SRF)))~~ chapter 246-296 WAC.

(2) All noncommunity and all community systems not required to complete a water system plan as described under WAC 246-290-100(2) shall develop and implement a small water system management program.

(3) The purveyor shall submit this program for review and approval to the department when:

(a) A new NTNC public water system is created; ~~((or))~~

(b) An existing system has operational, technical, managerial, or financial problems, as determined by the department; or

(c) A system applies for funding under chapter 246-296 WAC.

(4) Content and detail shall be consistent with the size, complexity, past performance, and use of the public water system. General content topics shall include, but not be limited to, the following elements:

(a) System management;

(b) Annual operating permit;

(c) Water facilities inventory form;

(d) Service area and facility map. Municipal water suppliers must identify where their water rights place of use will be expanded to their service area if the requirements under WAC 246-290-107 for the expanded area have been met;

(e) Water right self assessment;

(f) Description of the system's source(s) including the name and location of any body of water from which its water is diverted or withdrawn;

(g) A water use efficiency program. Municipal water suppliers must meet the requirements in WAC 246-290-810;

(h) Water production and consumption data including each of the following:

(i) Monthly and annual production for each source, including water purchased from another public water system;

(ii) Annual consumption totals for residential and non-residential connections;

(iii) Total annual volume of water supplied to other public water systems;

(i) Average daily demand;

(j) Current population served;

(k) The forecast of average daily demand based on the system's approved number of connections that considers:

(i) Water use trends based on actual water use records; and

(ii) Applicable land use plans;

(l) An evaluation that has considered the feasibility of adopting and implementing a rate structure that encourages water demand efficiency;

(m) Source protection;

(n) Component inventory and assessment;

(o) List of planned system improvements;

(p) Water quality monitoring program;

(q) Operation and maintenance program under WAC 246-290-415(2) and 246-290-654(5) as applicable;

(r) Cross-connection control program;

(s) Emergency response plan; and

(t) Budget.

(5) The department may require changes be made to a small water system management program if necessary to effectively accomplish the program's purpose.

#### NEW SECTION

**WAC 246-290-106 Duty to provide service.** Municipal water suppliers required to submit a water system plan for approval under WAC 246-290-100(2) must also include in the water system plan the provisions of this section as required under RCW 43.20.260. In approving the water system plan of a public water system, the department shall ensure that water service to be provided by the system under the water system plan for any new industrial, commercial, or residential use is consistent with the requirements adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area.

(1) A municipal water supplier has a duty to provide retail water service to all new service connections within its retail service area if:

(a) Its service can be available in a timely and reasonable manner;

(b) The municipal water supplier has sufficient water rights to provide service;

(c) The municipal water supplier has sufficient capacity to serve the water in a safe and reliable manner as determined by the department; and

(d) It is consistent with the requirements of:

(i) Any comprehensive plans or development regulations adopted under chapter 36.70A RCW; or

(ii) Any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area and for water service by the water utility of a city or town, with the utility service extension ordinances of the city or town.

(2) Municipal water suppliers must provide a retail service area map.

At a minimum, the retail service area must include the municipal water supplier's existing service area and may also include areas where future water service is planned if the requirements of subsection (1) of this section can be met. Municipal water suppliers may provide temporary service to another water system if a written agreement with the water system is in place.

(3) Municipal water suppliers must meet the requirements of WAC 246-290-108 for their retail service area.

(4) Municipal water suppliers must provide their service policies and conditions of service including how new service will be provided in a timely and reasonable manner.

(5) To resolve a significant public health and safety concern, the department may allow water service to be extended prior to meeting the requirements of this section.

NEW SECTION

**WAC 246-290-107 Place of use expansion.** The place of use of a surface water right or a ground water right may be expanded to include any portion of the approved service area that was not previously within the place of use for the water right when documented in an approved planning or engineering document under chapter 43.20 RCW or in accordance with procedures adopted under chapter 70.116 RCW. This occurs as an effect of the department's approval of a water system plan, small water system management program, engineering document, or as an effect of the local legislative authority's approval of a coordinated water system plan.

(1) The following conditions must be met:

(a) The municipal water supplier is in compliance with the terms of the water system plan or small water system management program, including those regarding water use efficiency.

(b) The alteration of the place of use is not inconsistent regarding an area added to the place of use with any comprehensive plans or development regulations adopted under chapter 36.70A RCW, or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county.

(c) The alteration of the place of use is not inconsistent regarding an area added to the place of use with any watershed plan approved under chapter 90.82 RCW or a comprehensive watershed plan approved under RCW 90.54.040(1) after September 3, 2003, if such a watershed plan has been approved for the area.

(2) Municipal water suppliers must:

(a) Identify the portions of the service area where the place of use will be expanded.

(b) Document that subsection (1) of this section is met.

NEW SECTION

**WAC 246-290-108 Consistency with local plans and regulations.** Consistency with local plans and regulations applies to planning and engineering documents under WAC 246-290-106 and 246-290-107.

(1) Local plans and regulations include any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the applicable service area and for water service by the water utility of a city or town, with the utility service extension ordinance of the city or town.

(2) A municipal water supplier must include a consistency review and supporting documentation in its planning or engineering document describing how it has considered consistency with local plans and regulations. This review must include elements of local plans and regulations, as they reasonably relate to water service to be provided by a municipal water supplier for any new connection, including:

(a) Land use within the applicable service area;

(b) Six-year growth projections used in the demand forecast;

(c) Utility service extension ordinances of a city or town when water service is provided by the water utility of the city or town;

(d) Provisions of water service for new service connections for the planning period identified in the document; and

(e) Other relevant elements related to water supply planning as determined by the department.

(3) Municipal water suppliers must request each local government jurisdiction with authority over the applicable service area to provide a consistency review.

(a) Local government jurisdictions shall have a minimum of sixty days to review the planning or engineering document unless another state statute or state regulation requires a different time frame. A local government jurisdiction may provide notice that an additional thirty days are needed to review the planning or engineering document. Within the sixty-day time frame, or the thirty-day time frame, local government jurisdictions must document any inconsistency with local plans and regulations as provided in this section and provide this information to the department and the municipal water supplier.

(b) If the applicable local government jurisdiction documents in writing an inconsistency exists with local plans and regulations as provided in this section, the department will require the municipal water supplier to address the inconsistency. The local government jurisdiction shall have sixty days to review any revisions or responses that address the inconsistency.

(4) If a local government jurisdiction does not provide a consistency review, the municipal water supplier shall complete the consistency review. The municipal water supplier must document:

(a) The amount of time provided to each local government jurisdiction with authority to review the planning and engineering documents as defined in subsection (3) of this section; and

(b) What efforts were taken to request a consistency review from the local government jurisdiction.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-110 Project report.** (1) The project report is a written document that describes why a project is being proposed and includes engineering design calculations showing how the project will meet its objectives.

(2) ~~((The))~~ Purveyors shall submit project reports to the department and ~~((receive))~~ obtain written approval prior to installation or construction of any new water system, water system extension, or improvement. The department may require the submittal of a project report for the purpose of resolving a system operational problem. Exceptions to this requirement are listed in WAC 246-290-125.

(3) Project reports submitted for approval by purveyors who are required to have a water system plan will not be considered for approval unless a current, approved water system plan that adequately addresses the project is on file with the department. In the event that a purveyor of an existing system does not have such a water system plan, the department may enter into a compliance agreement with the purveyor that grants a time extension to complete the water system plan.

(4) Project reports shall be consistent with the standards identified in Part 3 of this chapter. Depending on the complexity and type of project or problem, shall include the following elements (information contained in a current water system plan or other engineering document previously approved by the department need not be duplicated, but must be specifically referenced):

(a) Project description, including:

(i) Why the project is being proposed, how problem(s) (if any) are to be addressed, and the relationship of the project to other system components;

(ii) A statement of (~~State Environmental Policy Action~~ ~~(SEPA)~~) determination of nonsignificance or justification of why SEPA does not apply to project;

(iii) (~~If applicable,~~) Source development information (~~(refer to)~~ under WAC 246-290-130, (~~Source approval, WAC~~) 246-290-132, (~~Interties,~~) and (~~WAC~~) 246-290-135, (~~Source protection~~) if applicable;

(iv) (~~If applicable,~~) Type of treatment (~~(refer to)~~ under WAC 246-290-250, (~~Water treatment and Part 6, Surface water treatment~~) if applicable; and

(v) A summary of consumer and user complaints.

(b) Planning data. If a purveyor has a water system plan or small water system management program, the project report shall indicate the proposed project's relationship to the plan. If the purveyor is not required by WAC 246-290-100 to have a water system plan, planning related information shall include:

(i) General project background with population and water demand forecasts;

(ii) How the project will impact neighboring water systems;

(iii) Local requirements, such as fire flow;

(iv) Additional management responsibilities (~~(in accordance with)~~ under WAC 246-290-105, (~~Small water system management program, WAC~~) 246-290-415, (~~Operations and maintenance,~~) and chapter 246-292 WAC (~~(Water works operator certification regulations)~~);

(v) Implementation strategies or proposed construction schedule;

(vi) Estimated capital and annual operating cost, and method of financing, if applicable.

(c) An analysis of alternatives, including description of options and rationale for selecting the proposed option.

(d) A review of water quality as it relates to the purpose of the proposed project. If a project involves treatment and/or a filtration facility pilot study, refer to (~~department~~) department guidance, reporting requirements for corrosion control under 40 CFR 141.90, and tracer studies under WAC 246-290-636(5).

(e) When the project involves a new source or an increase in system physical capacity, a review of water quantity, including a water rights assessment, unless (~~such an~~) the assessment has previously been submitted in a water system plan or small water system management program that has been approved by the department. The purveyor shall take any follow-up action as directed by the department, to determine conformance with applicable state water rights laws.

(f) Engineering calculations including sizing justification, hydraulic analysis, physical capacity analysis, and other relevant technical considerations necessary to support the project.

(g) Design and construction standards, including performance standards, construction materials and methods, and sizing criteria, if applicable.

(h) Project reports for the design of treatment facilities shall include the following:

(i) Detailed design criteria and calculations to support the proposed treatment processes, process control, and process utilities; and

(ii) Proposed methods and schedules for start up, testing, and operation of the completed treatment facility.

(i) Legal considerations, such as ownership, right of way, sanitary control area (SCA), restrictive covenants, restrictions related to water use that are recorded on titles or deeds to properties, and relationship with the boundary review board and (~~the utilities and transportation commission~~) UTC(~~).~~).

(j) Other necessary department-determined considerations.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-120 Construction documents.** (1) Construction documents shall identify how specific projects will be constructed while satisfying the requirements and conditions established in the project report and/or the water system plan.

(2) Purveyors shall submit construction documents to the department (~~for~~) and obtain written approval prior to (~~installation~~) construction of any new water system, or water system extension or improvement. Exceptions to this requirement are listed in WAC 246-290-125.

(3) Construction documents submitted for approval by purveyors who are required to have a water system plan will not be considered for approval unless a current, approved water system plan that adequately addresses the project is on file with the department. In the event that a purveyor of an existing system does not have (~~such~~) a water system plan, the department may enter into a compliance agreement with the purveyor that grants a time extension to complete the water system plan.

(4) Construction documents shall be consistent with the standards identified in Part 3 of this chapter and shall include, at a minimum, the following:

(a) Drawings. Include detailed drawings of each project component;

(b) Material specifications. List detailed material specifications for each project component;

(c) Construction specifications.

(i) List detailed construction specifications and assembly techniques for carrying out the project;

(ii) Testing. Identify testing criteria and procedures for each applicable portion of the project;

(iii) Disinfection. Identify specific disinfection procedures that shall conform with (~~American Water Works~~

~~Association~~(f))AWWA((g)) standards or other standards acceptable to the department;

(iv) Inspection. Identify provisions for inspection of the installation of each project component. See WAC 246-290-040 and subsection (5) of this section for construction reporting requirements;

(d) Change orders. All significant changes shall be submitted to and approved by the department in writing. The change order must identify who will be responsible for obtaining ~~((departmental))~~ department approval and how change orders will be reported to the department. Significant means a change in materials used, deviations from original intent of project, or changes made to the physical capacity of the project;

(e) Record drawings. Record drawings provided to the purveyor following the completion of the project shall be maintained and available to the department upon request.

(5) Purveyors shall submit a construction completion report ~~((departmental))~~ department form) to the department within sixty days of completion and before use of distribution-related projects in accordance with WAC 246-290-125 (3)(f), or other project approved for construction by the department. Exceptions to this requirement are projects listed in WAC 246-290-125(1). The form shall:

(a) Bear the seal, date, and signature of a professional engineer licensed in the state of Washington;

(b) State the project is constructed and is completed in accordance with department regulations and principles of standard engineering practice, including physical testing procedures, water quality tests, and disinfection practices; and

(c) Document system physical capacity to serve consumers if the project results in a change (increase or decrease) in physical capacity.

(6) The purveyor shall submit a new or updated water facilities inventory (WFI) form ~~((departmental))~~ department form) with the construction completion report ~~((departmental))~~ department form) for a new water system, whenever there are changes or additions to an existing water system that would change information of the WFI, or when required by the department.

(7) If the project results in an increase in the water system's physical capacity, the purveyor shall submit a water right self-assessment, unless ~~((such an))~~ the assessment has previously been submitted in a project report, water system plan, or small water system management program, that has been approved by the department. The purveyor shall take any follow-up action, as directed by the department, to determine conformance with applicable state water rights laws.

(8) Approval of construction documents shall be in effect for two years unless the department determines a need to withdraw the approval. An extension of the approval may be obtained by submitting a status report and a written schedule for completion. Extensions may be subject to additional terms and conditions imposed by the department.

~~((The purveyor shall fulfill the requirements of this section before the use of any completed project.~~

~~(10))~~ Purveyors of new water systems must meet the ownership requirements of WAC 246-290-035 and the water system planning requirements of WAC 246-290-100 or 246-

290-105 before the department will review and approve the purveyors' construction documents.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-125 Project report and construction document submittal exceptions.** (1) The following projects do not require project reports ~~((in accordance with))~~ under WAC 246-290-110 and construction documents ~~((in accordance with))~~ under WAC 246-290-120 to be submitted to the department for review and approval prior to installation:

(a) Installation of valves, fittings, and meters, including backflow prevention assemblies;

(b) Installation of hydrants ~~((in accordance with))~~ under WAC 246-290-230 (3) and (6);

(c) Repair of a system component or replacement with a component of a similar capacity and material in accordance with the original construction specifications of the approved design~~((; or))~~. For the purposes of replacing existing pipe, similar capacity includes one standard pipe size larger.

(d) Maintenance or painting of surfaces not contacting potable water.

(2) Purveyors may elect to not submit to the department for review and approval project reports ~~((in accordance with))~~ under WAC 246-290-110 and construction documents ~~((in accordance with))~~ under WAC 246-290-120 for new distribution mains if:

(a) The purveyor has on file with the department a current department-approved water system plan that includes standard construction specifications for distribution mains; and

(b) The purveyor maintains on file a completed construction completion report ~~((departmental))~~ department form) in accordance with WAC 246-290-120(5) and makes it available for review upon request by the department.

(3) Purveyors may elect to not submit to the department for review and approval project reports ~~((in accordance with))~~ under WAC 246-290-110 and construction documents ~~((in accordance with))~~ under WAC 246-290-120 for review and approval of other distribution-related projects as defined in WAC 246-290-010 providing:

(a) The purveyor has on file with the department a current department-approved water system plan, in accordance with WAC 246-290-100(5);

(b) The purveyor submits a written request with a new water system plan or an amendment to a water system plan, and updates the request with each water system plan update. The written request should specifically identify the types of projects or facilities for which the submittal exception procedure is requested;

(c) The purveyor has documented that they have employed or hired under contract the services of a professional engineer licensed in the state of Washington to review distribution-related projects not submitted to the department for review and approval. The review engineer and design engineer shall not be the same individual. The purveyor shall provide written notification to the department whenever they propose to change their designated review engineer;

(d) If the project is a new transmission main, storage tank, or booster pump station, it must be identified in the capital improvement program of the utility's water system plan. If not, either the project report must be submitted to the department for review and approval, or the water system plan must be amended;

(e) A project summary file is maintained by the purveyor for each project and made available for review upon request by the department, and includes:

- (i) Descriptive project summary;
- (ii) Anticipated completion schedule;
- (iii) Consistency with utility's water system plan;
- (iv) Water right self-assessment, where applicable;
- (v) Change in system physical capacity;
- (vi) Copies of original design and record drawings;
- (vii) Engineering design review report (~~departmental~~ department form). The form shall:

(A) Bear the seal, date, and signature of a professional engineer licensed in the state of Washington prior to the start of construction;

(B) Provide a descriptive reference to completed project report and/or construction documents reviewed, including date of design engineer's seal and signature; and

(C) State the project report and/or construction documents have been reviewed, and the design is in accordance with department regulations and principles of standard engineering practice;

(f) The construction completion report is submitted to the department in accordance with WAC 246-290-120(5) for new storage tanks and booster pump stations, and maintained on file with the water system for all other distribution-related projects;

(g) A WFI is completed in accordance with WAC 246-290-120(6); and

(h) The purveyor meets the requirements of chapter 246-294 WAC to have a category "green" operating permit.

(4) Source of supply (including interties) and water quality treatment-related projects shall not be eligible for the submittal exception procedure.

(5) Purveyors not required to prepare a water system plan under WAC 246-290-100 shall be eligible for the submittal exception procedure if the purveyor:

(a) Has a department-approved water system plan meeting the requirements of WAC 246-290-100; and

(b) Complies with all other requirements in this section~~(-); and~~

~~((6))~~ (c) Ensures that all work required to be prepared under the direction of a professional engineer be accomplished per WAC 246-290-040 and chapter 18.43 RCW.

AMENDATORY SECTION (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-130 Source approval.** (1) Every purveyor shall obtain drinking water from the highest quality source feasible. No new source, previously unapproved source, or modification of an existing source shall be used as a public water supply without department approval. No intake or other connection shall be maintained between a

public water system and a source of water not approved by the department.

(2) Before initiating source development or modification, the purveyor shall contact the department to identify submittal requirements.

(3) Any party seeking source approval shall provide the department sufficient documentation, in a project report, construction documents, or in supplemental documents, that the source:

(a) Is reasonable and feasible for the type and size of the system;

(b) May legally be used in conformance with state water rights laws;

(c) Supplies water that is physically and reliably available in the necessary quantities, as shown in:

(i) A hydrogeologic assessment of the proposed source;

(ii) A general description of the watershed, spring, and/or aquifer recharge area affecting the quantity or quality of flow, which includes seasonal variation and upstream water uses that may significantly affect the proposed source;

(iii) For ground water and spring sources, well source development data that are available from a pump test at the maximum design rate and duration, or are available from other sources of information, that establish pump settings (depth) in the well and demonstrate adequacy of water quantity to meet design criteria while not leading to water quality problems;

(iv) For ground water and spring sources, installation of a source meter or other equivalent device that reliably measures volume of flow into the system;

(d) Is, or is not, a GWI under WAC 246-290-640, and meets or can meet the applicable requirements for GWI sources as described in that section including treatment;

(e) Adequately provides for source protection, as shown in:

(i) For surface water and GWI sources, the watershed control program identified under WAC 246-290-135 and Part 6 of this chapter;

(ii) For wells, a preliminary department susceptibility assessment or equivalent information, and preliminary WHPA delineation and contaminant inventory, under the requirements for sanitary control and wellhead protection under WAC 246-290-135;

(f) Is designed and constructed in conformance with this chapter, and relevant requirements of chapter 173-160 WAC (department of ecology well construction standards);

(g) Meets water quality standards under WAC 246-290-310, as shown in an initial water quality analysis that includes, at a minimum, the following:

(i) Bacteriological;

(ii) Complete inorganic chemical and physical except that the MCL for arsenic under WAC 246-290-310 does not apply to TNC systems;

(iii) Complete VOC;

(iv) Radionuclides, if source approval is requested for a community system;

(v) SOC, except where waived or not required under WAC 246-290-310; and

(vi) Any other information required by the department relevant to the circumstances of the particular source.

Sources that otherwise would not meet water quality standards may be approved if treatment is provided.

(4) The required documentation under subsection (3) of this section shall include, at a minimum:

(a) A ~~((copy of the water right, or other written evidence of the existence of the right))~~ water right self-assessment;

(b) A map showing the project location and vicinity;

(c) A map depicting topography, distances to the surface water intake, well or spring from existing property lines, buildings, potential sources of contamination, ditches, drainage patterns, and any other natural or man-made features affecting the quality or quantity of water;

(d) The dimensions, location, and legal documentation of the ~~((sanitary control area (-)))~~ SCA ~~(+))~~ under WAC 246-290-135;

(e) A copy of the on-site inspection form completed by the department or local health department representative;

(f) A copy of the water well report including the unique well identification tag number, depth to open interval or top of screened interval, overall depth of well from the top of the casing, vertical elevation, and location (both plat location and latitude/longitude); and

(g) Documentation of source meter installation. The purveyor may utilize other documents, such as a water system plan, susceptibility assessment, wellhead protection program, project report, or construction documents, to provide ~~((such))~~ the documentation and information to the department, provided that ~~((such))~~ the documents are current, and the purveyor indicates the location in the document of the relevant information.

(5) If treatment of a source is necessary to meet water quality standards, the purveyor may be required to meet the provisions of WAC 246-290-250 and Part 6 of this chapter, if applicable, prior to or as a condition of approval.

(6) An intertie must be adequately described in a written agreement between the purveyor and the supplier of the water, and otherwise meet the requirements of WAC 246-290-132.

(7) The purveyor shall not construct facilities for source development and use without prior approval of the department pursuant to the provisions of WAC 246-290-120.

(8) ~~((The purveyor shall receive a written source approval when:~~

~~(a) The purveyor has complied with the relevant provisions of subsections (1) through (7) of this section; and~~

~~(b) The developed source provides water complying with this chapter.~~

~~(9))~~ The purveyor may ~~((receive))~~ request a conditional source approval, such as one that sets limits on use or requires interim treatment, if further analysis of the quality of the source is required before final approval.

~~((+0))~~ (9) For sources or supplies of water used by bottled water or ice plants to produce bottled water or ice:

(a) If the bottled water or ice plant is a Group A community water system and the plant uses the system's source for the water that is bottled or made into ice, the source and supply used for the bottled water and ice shall meet the applicable Group A requirements;

(b) If the bottled water or ice plant uses its own source for the water that is bottled or made into ice, and the plant is

not a Group A community water system, the owner or operator shall obtain source approval from the department, and the source water shall meet the ongoing source water quality monitoring requirements for a Group A community system;

(c) If the bottled water or ice plant purchases the water for bottling or making ice from another source or supply, the water shall meet the minimum requirements for a Group A community water system, and the owner or operator of the plant shall ensure that the water meets ~~((such))~~ the requirements;

(d) The source or supply for the water that is bottled or made into ice shall be protected from contamination prior to the bottling or ice making process; and

(e) In addition to the requirements imposed under this subsection, the processing of bottled water shall be subject to regulation by the state department of agriculture and the United States Food and Drug Administration.

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

**WAC 246-290-132 Interties.** (1) No interties shall be used and/or constructed as a public water supply without department approval.

(2) Interties shall not be eligible for submittal exceptions pursuant to WAC 246-290-125.

(3) Prior to department approval, purveyors proposing nonemergency interties shall ensure that the intertie is addressed:

(a) In an approved coordinated water system plan, water system plan, water system plan update, water system plan amendment, or small water system management program including:

(i) Location of the proposed intertie;

(ii) Date it is proposed to be utilized;

(iii) The purpose, physical capacity, service area, and proposed usage of the intertie;

(iv) Copy of the intertie agreement between purveyors;

(v) Description of how the intertie:

(A) Improves overall system reliability;

(B) Enhances the manageability of the system;

(C) Provides opportunities for conjunctive use; or

(D) Delays or avoids the need to develop new water sources;

(vi) Identification of any potential public health or safety concerns;

(vii) Discussion of any water quality and treatment issues;

(viii) Demonstration of the source capacity and hydraulic capacity of the supplying and receiving systems at the designed flow rate through the intertie;

(ix) Water right self-assessment;

(x) Identification of alternative sources that will be utilized when the intertie agreement expires if the water is not being provided in perpetuity; and

(xi) Identification and comparison of alternatives if any.

(b) In construction documents ~~((in accordance with))~~ under WAC 246-290-120 including:

(i) Demonstration of the installation of a source meter to measure water exchanged; and



(ii) Water right self-assessment, if not previously provided to the department. ~~((Where))~~ When RCW 90.03.383 requires a water right or water right change to be issued by the department of ecology, construction work on the intertie shall not begin, ~~((notwithstanding any prior approval of the intertie by the department in a water system plan,))~~ until the department of ecology issues the required water right document.

(4) Emergency use interties are interconnections between public water systems permitting the temporary exchange or delivery of water between those systems only in cases of emergency that result in permanent supplies being unavailable for use. Prior to department approval, purveyors proposing emergency use interties shall ensure that the emergency intertie is addressed:

(a) In an approved coordinated water system plan, water system plan, water system plan update, water system plan amendment, or small water system management ~~((plan))~~ program including:

- (i) Description of the intended use of the emergency intertie;
- (ii) Location of the proposed intertie;
- (iii) Date the intertie is intended to be operational;
- (iv) Copy of the intertie agreement between purveyors detailing the conditions and limitations of the intertie; and
- (v) Hydraulic analysis conducted to identify the impacts upon each water system.

(b) In a project report ~~((in accordance with))~~ under WAC 246-290-110 or in a construction document ~~((in accordance with))~~ under WAC 246-290-120.

(5) Purveyors proposing interties shall apply to the department of ecology for water right changes as provided in RCW 90.03.383. Except as provided in RCW 90.03.383(7) and 90.03.390, no interties may be constructed without department of ecology action on the proposed change.

(6) The purveyor may be required to have emergency interties approved as nonemergency interties where the interties are used frequently or on a long-term basis. If the department makes a determination, the intertie will require approval in accordance with subsection (3) of this section.

(7) Intertie agreements between purveyors shall include:

- (a) Identification of specific time periods in which water will be provided;
- (b) Identification of the volume of water available for use, including any seasonal or other restrictions; and
- (c) Identification of how water use efficiency programs, data collection, water demand forecasting, and other operational matters will be coordinated.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-135 Source water protection.** (1) The department may require monitoring and controls in addition to those specified in this section if, in the opinion of the department, a potential risk exists to the water quality of a source.

(2) ~~((Sanitary control area))~~ SCA ~~((+))~~.

(a) The purveyor shall maintain an SCA around all sources for the purpose of protecting them from existing and potential sources of contamination.

(b) For wells and springs, the minimum SCA shall have a radius of one hundred feet (thirty meters) and two hundred feet (sixty meters) respectively, unless engineering justification demonstrates that a smaller area can provide an adequate level of source water protection. The justification shall address geological and hydrological data, well construction details, mitigation measures, and other relevant factors necessary to assure adequate sanitary control.

(c) The department may require a larger SCA than specified in (b) of this subsection, or additional mitigation measures if land use, geological, and/or hydrological data support ~~((such a))~~ the decision. It shall be the purveyor's responsibility to obtain the protection needed.

(d) ~~((No))~~ The purveyor shall prohibit the construction, storage, disposal, or application of any source of contamination ~~((may be constructed, stored, disposed of, or applied))~~ within the SCA without the permission of the ~~((department and the))~~ purveyor.

(e) The SCA shall be owned by the purveyor in fee simple, or the purveyor shall have the right to exercise complete sanitary control of the land through other legal provisions.

(f) A purveyor, owning all or part of the SCA in fee simple or having possession and control, shall send to the department copies of legal documentation, such as a duly recorded declaration of covenant, restricting the use of the land. This legal documentation shall state:

(i) ~~((No))~~ Constructing, storing, disposing, or applying any source of contamination ~~((may be constructed, stored, disposed of, or applied))~~ is prohibited without the permission of the ~~((department and the))~~ purveyor; and

(ii) If any change in ownership of the system or SCA is considered, all affected parties shall be informed of these requirements.

(g) Where portions of the control area are in the possession and control of another, the purveyor shall obtain a duly recorded restrictive covenant which shall run with the land, restricting the use of ~~((said))~~ the land in accordance with this chapter and provide the department with copies of the appropriate documentation.

(3) Wellhead protection.

(a) Purveyors of water systems using ground water or spring sources shall develop and implement a wellhead protection program.

(b) The wellhead protection program shall be part of the water system plan required under WAC 246-290-100 or the small water system management program required under WAC 246-290-105.

(c) The purveyor's wellhead protection program shall contain, at a minimum, the following elements:

(i) A completed susceptibility assessment or equivalent information;

(ii) ~~((Wellhead protection area))~~ WHPA ~~((+))~~ delineation for each well, wellfield, or spring with the six month, one, five and ten year time of travel boundaries marked, or boundaries established using alternate criteria approved by the department in those settings where ground water time of travel is not a reasonable delineation criteria. WHPA delin-

eations shall be done in accordance with recognized methods such as those described in the following sources:

- (A) Department guidance on wellhead protection; or
  - (B) EPA guidance for delineation of wellhead protection areas;
  - (iii) An inventory, including identification of site locations and owners/operators, of all known and potential ground water contamination sources located within the defined WHPA(s) having the potential to contaminate the source water of the well(s) or spring(s). This list shall be updated every two years;
  - (iv) Documentation of purveyor's notification to all owners/operators of known or potential sources of ground water contamination listed in (c)(B)(iii) of this subsection;
  - (v) Documentation of purveyor's notification to regulatory agencies and local governments of the boundaries of the WHPA(s) and the findings of the WHPA inventory;
  - (vi) A contingency plan to ensure consumers have an adequate supply of potable water in the event that contamination results in the temporary or permanent loss of the principal source of supply (major well(s) or wellfield); and
  - (vii) Documentation of coordination with local emergency incident responders (including police, fire and health departments), including notification of WHPA boundaries, results of susceptibility assessment, inventory findings, and contingency plan.
- (4) Watershed control program.
- (a) Purveyors of water systems using surface water or GWI sources shall develop and implement a watershed control program ~~((in accordance with))~~ under Part 6 of chapter 246-290 WAC as applicable.
  - (b) The watershed control program shall be part of the water system plan required in WAC 246-290-100 or the small water system management program required in WAC 246-290-105.
  - (c) The purveyor's watershed control program shall contain, at a minimum, the following elements:
    - (i) Watershed description and inventory, including location, hydrology, land ownership and activities that may adversely affect source water quality;
    - (ii) An inventory of all potential surface water contamination sources and activities, including identification of site locations and owner/operators, located within the watershed and having the significant potential to contaminate the source water quality;
    - (iii) Watershed control measures, including documentation of ownership and relevant written agreements, and monitoring of activities and water quality;
    - (iv) System operation, including emergency provisions; and
    - (v) Documentation of water quality trends.
  - (d) The purveyor shall submit the watershed control program to the department for approval. Following ~~((departmental))~~ department approval, the purveyor shall implement the watershed control program as approved.
  - (e) Purveyors of systems using unfiltered surface or GWI sources and meeting the criteria to remain unfiltered as specified in WAC 246-290-690 shall submit an annual report to the department that summarizes the effectiveness of the

watershed control program. Refer to WAC 246-290-690 for further information about this report.

(f) The purveyor shall update the watershed control program at least every six years, or more frequently if required by the department.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-200 Design standards.** (1) Purveyors shall ensure that good engineering criteria and practices are used in the design and construction of all public water systems, such as those set out in:

- (a) Department guidance on design for Group A public water systems;
  - (b) The most recent published edition of the ~~((Uniform Building Code (UBC) or))~~ International Building Code (IBC), the Uniform Plumbing Code (UPC), and other national model codes adopted in Washington state;
  - (c) The most recent published edition of *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers*;
  - (d) Standard specifications of the American Public Works Association ~~((APWA))~~, the American Society of Civil Engineers ~~((ASCE))~~, ~~((the American Water Works Association (AWWA)))~~, or the American Society for Testing and Materials ~~((ASTM))~~;
  - (e) Design criteria, such as contained in current college texts and professional journal articles, acceptable to the department;
  - (f) Chapter 173-160 WAC *Minimum Standards for Construction and Maintenance of Water Wells*;
  - (g) The latest edition of the PNWS-AWWA Cross-Connection Control Manual, or the University of Southern California (USC) Manual of Cross-Connection Control.
- (2) In addition, purveyors of new or expanding public water systems shall consider and use, as appropriate, the following design factors:
- (a) Historical water use;
  - (b) Community versus recreational uses of water;
  - (c) Local conditions and/or regulations;
  - (d) Community expectations;
  - (e) Public Water System Coordination Act considerations where appropriate;
  - (f) Provisions for systems and component reliability in accordance with WAC 246-290-420;
  - (g) Wind pressures, seismic risk, snow loads, and flooding;
  - (h) Other risks from potential disasters, as feasible; and
  - (i) Other information as required by the department.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-235 ((Distribution reservoirs)) Finished water storage facilities.** (1) ~~((Distribution reservoirs))~~ Finished water storage facilities shall be designed to:

- (a) Prevent entry by birds, animals, insects, excessive dust, and other potential sources of external contamination. The design shall include provisions for a lockable weather-

tight roof, a screened roof vent, an overflow pipe with atmospheric discharge or other suitable means to prevent a cross-connection, sample collection capability, a drain to daylight (or an approved alternative that is adequate to protect against cross-connection), a provision for tank isolation in order to perform maintenance procedures, and other appurtenances appropriate to the protection of stored water from contamination;

(b) Maintain water circulation, prevent water stagnation, and provide adequate disinfection contact time; and

(c) Be accessible for routine maintenance and water quality monitoring.

(2) Equalizing storage, as defined in WAC 246-290-010, shall be provided to meet peak periods of demand, either daily or longer, when determined to be necessary based on available, or designed, source pumping capacity.

(3) Operational, standby, and fire suppression storage volumes as defined in WAC 246-290-010 shall be provided, as applicable, for all pressure zones to meet both normal as well as abnormal demands of the system.

(4) Standby and fire suppression storage volumes may be nested with the larger of the two volumes being the minimum available, provided the local fire protection authority does not require them to be additive.

**AMENDATORY SECTION** (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-300 Monitoring requirements.** (1) General.

(a) The monitoring requirements specified in this section are minimums. The department may require additional monitoring when:

(i) Contamination is present or suspected in the water system;

(ii) A ground water source is determined to be a potential GWI;

(iii) The degree of source protection is not satisfactory;

(iv) Additional monitoring is needed to verify source vulnerability for a requested monitoring waiver;

(v) Under other circumstances as identified in a ~~((departmental))~~ department order; or

(vi) Additional monitoring is needed to evaluate continuing effectiveness of a treatment process where problems with the treatment process may exist.

(b) Special purpose samples collected by the purveyor shall not count toward fulfillment of the monitoring requirements of this chapter unless the quality of data and method of sampling and analysis are acceptable to the department.

(c) The purveyor shall ensure samples required by this chapter are collected, transported, and submitted for analysis according to EPA-approved methods. The analyses shall be performed by a laboratory accredited by the state. Qualified water utility, accredited laboratory, health department personnel, and other parties approved by the department may conduct measurements for pH, temperature, residual disinfectant concentration, alkalinity, bromide, chlorite, TOC, SUVA, and turbidity as required by this chapter, provided, these measurements are made in accordance with EPA approved methods.

(d) Compliance samples required by this chapter shall be taken at locations listed in Table 3 of this section.

(e) Purveyors failing to comply with a monitoring requirement shall notify:

(i) The department ~~((in accordance with))~~ under WAC 246-290-480; and

(ii) The owner or operator of any consecutive system served and the appropriate water system users ~~((in accordance with))~~ under 40 CFR 141.201 and Part 7, Subpart A of this chapter.

(2) Selling and receiving water.

(a) Source monitoring. Purveyors, with the exception of those that "wheel" water to their consumers (i.e., sell water that has passed through another purchasing purveyor's distribution system), shall conduct source monitoring ~~((in accordance with))~~ under this chapter for the sources under their control. The level of monitoring shall satisfy the monitoring requirements associated with the total population served by the source.

(b) Distribution system monitoring. The purveyor of a system that receives and distributes water shall perform distribution-related monitoring requirements. Monitoring shall include, but not be limited to, the following:

(i) Collect coliform samples ~~((in accordance with))~~ under subsection (3) of this section;

(ii) Collect ~~((trihalomethane samples if required by subsection (6) of this section or))~~ disinfection by-product samples if required by ~~((subsection (7) of))~~ this section;

(iii) Perform the distribution system residual disinfectant concentration monitoring ~~((in accordance with))~~ under subsection (7) of this section, and as required under WAC 246-290-451 or 246-290-694;

(iv) Perform lead and copper monitoring required under 40 CFR 141.86, 141.87, and 141.88;

(v) Perform the distribution system monitoring ~~((in accordance with))~~ under 40 CFR 141.23(b) for asbestos if applicable;

(vi) Other monitoring as required by the department.

(c) Reduced monitoring for regional programs. The receiving purveyor may receive reductions in the coliform, lead and copper, disinfection by-product (including THMs) and distribution system disinfectant residual concentration monitoring requirements, provided the receiving system:

(i) Purchases water from a purveyor that has a department-approved regional monitoring program; and

(ii) Has a written agreement with the supplying system or regional water supplier that is acceptable to the department, and which identifies the responsibilities of both the supplying and receiving system(s) with regards to monitoring, reporting and maintenance of the distribution system.

(d) Periodic review of regional programs. The department may periodically review the sampling records of public water systems participating in a department-approved monitoring program to determine if continued reduced monitoring is appropriate. If the department determines a change in the monitoring requirements of the receiving system is appropriate:

(i) The department shall notify the purveyor of the change in monitoring requirements; and

(ii) The purveyor shall conduct monitoring as directed by the department.

(3) Bacteriological.

(a) The purveyor shall be responsible for collection and submittal of coliform samples from representative points throughout the distribution system. Samples shall be collected after the first service and at regular time intervals each month the system provides water to consumers. Samples shall be collected that represent normal system operating conditions.

(i) Systems providing disinfection treatment shall, when taking a routine or repeat sample, measure residual disinfectant concentration within the distribution system at the same time and location and comply with the residual disinfection monitoring requirements under WAC 246-290-451.

(ii) Systems providing disinfection treatment shall assure that disinfectant residual concentrations are measured and recorded on all coliform sample report forms submitted for compliance purposes.

(b) Coliform monitoring plan.

(i) The purveyor shall prepare a written coliform monitoring plan and base routine monitoring upon the plan. The plan shall include coliform sample collection sites and a sampling schedule.

(ii) The purveyor shall:

(A) Keep the coliform monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer ensures representative monitoring of the system, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(c) Monitoring frequency. The number of required routine coliform samples is based on total population served.

(i) Purveyors of **community** systems shall collect and submit for analysis no less than the number of routine samples listed in Table 2 during each calendar month of operation;

(ii) Unless directed otherwise by the department, purveyors of **noncommunity** systems shall collect and submit for analysis no less than the number of samples required in Table 2, and no less than required under 40 CFR 141.21. Each month's population shall be based on the average daily population and shall include all residents and nonresidents served during that month. During months when the average daily population served is less than twenty-five, routine sample collection is not required when:

(A) Using only protected ground water sources;

(B) No coliform were detected in samples during the previous month; and

(C) One routine sample has been collected and submitted for analysis during one of the previous two months.

(iii) Purveyors of systems serving both a resident and a nonresident population shall base their minimum sampling requirement on the total of monthly populations served, both resident and nonresident as determined by the department, but no less than the minimum required in Table 2; and

(iv) Purveyors of systems with a nonresident population lasting two weeks or less during a month shall sample as directed by the department. Sampling shall be initiated at least two weeks prior to the time service is provided to consumers.

(v) Purveyors of TNC systems shall not be required to collect routine samples in months where the population served is zero or the system has notified the department of an unscheduled closure.

(d) Invalid samples. When a coliform sample is determined invalid under WAC 246-290-320 (2)(d), the purveyor shall:

(i) Not include the sample in the determination of monitoring compliance; and

(ii) Take follow-up action as defined in WAC 246-290-320 (2)(d).

(e) The purveyor using a surface water or GWI source shall collect representative source water samples for bacteriological density analysis ~~(in accordance with)~~ under WAC 246-290-664 and 246-290-694 as applicable.

TABLE 2  
MINIMUM MONTHLY ROUTINE COLIFORM  
SAMPLING REQUIREMENTS

Population Served <sup>1</sup>	Minimum Number of Routine Samples/Calendar Month	
	When NO samples with a coliform presence were collected during the previous month	When ANY samples with a coliform presence were collected during the previous month
During Month		
1 - 1,000	1*	5
1,001 - 2,500	2*	5
2,501 - 3,300	3*	5
3,301 - 4,100	4*	5
4,101 - 4,900	5	5
4,901 - 5,800	6	6
5,801 - 6,700	7	7
6,701 - 7,600	8	8
7,601 - 8,500	9	9
8,501 - 12,900	10	10
12,901 - 17,200	15	15
17,201 - 21,500	20	20
21,501 - 25,000	25	25
25,001 - 33,000	30	30
33,001 - 41,000	40	40
41,001 - 50,000	50	50
50,001 - 59,000	60	60
59,001 - 70,000	70	70
70,001 - 83,000	80	80
83,001 - 96,000	90	90
96,001 - 130,000	100	100
130,001 - 220,000	120	120
220,001 - 320,000	150	150

Population Served <sup>1</sup>	Minimum Number of Routine Samples/Calendar Month	
	When NO sam- ples with a coliform pres- ence were col- lected during the previous month	When ANY sam- ples with a coliform pres- ence were col- lected during the previous month
During Month		
320,001 - 450,000	180	180
450,001 - 600,000	210	210
600,001 - 780,000	240	240
780,001 - 970,000	270	270
970,001 - 1,230,000 <sup>3</sup>	300	300

<sup>1</sup> Does not include the population of a consecutive system that purchases water. The sampling requirement for consecutive systems is a separate determination based upon the population of that system.

<sup>2</sup> Noncommunity systems using only protected ground water sources and serving less than 25 individuals, may collect and submit for analysis, one sample every three months.

<sup>3</sup> Systems serving populations larger than 1,230,000 shall contact the department for the minimum number of samples required per month.

\*In addition to the provisions of subsection (1)(a) of this section, if a system of this size cannot show evidence of having been subject to a sanitary survey on file with the department, or has been determined to be at risk to bacteriological concerns following a survey, the minimum number of samples required per month may be increased by the department after additional consideration of ((such)) factors such as monitoring history, compliance record, operational problems, and water quality concerns for the system.

(4) Inorganic chemical and physical.

(a) A complete inorganic chemical and physical analysis shall consist of the primary and secondary chemical and physical substances.

(i) Primary chemical and physical substances are antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate (as N), nitrite (as N), selenium, sodium, thallium, and for unfiltered surface water, turbidity. (Except that the MCL for arsenic under WAC 246-290-310 does not apply to TNC systems.)

(ii) Secondary chemical and physical substances are chloride, color, hardness, iron, manganese, specific conductivity, silver, sulfate, total dissolved solids\*, and zinc.

\* Required only when specific conductivity exceeds seven hundred micromhos/centimeter.

(b) Purveyors shall monitor for all primary and secondary chemical and physical substances identified in Table 4 and Table 5. Samples shall be collected in accordance with the monitoring requirements referenced in 40 CFR 141.23 introductory text, 141.23(a) through 141.23(j), excluding (i)(2), and 40 CFR 143.4, except for composite samples for systems serving less than three thousand three hundred one persons. For these systems, compositing among different systems may be allowed if the systems are owned or operated by a department-approved satellite management agency.

(c) Samples required by this subsection shall be taken at designated locations ((in accordance with)) under 40 CFR 141.23(a) through 141.23(j), excluding (i)(2), and 40 CFR 143.4, and Table 3 herein.

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) ((In accordance with)) Under 40 CFR 141.23 (a)(3), alternate sampling locations may be used if approved by the department. The process for determining these alternate sites is described in department guidance. Purveyors of community and NTNC systems may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. Alternate sampling plans shall address the following:

- (A) Source vulnerability;
- (B) Individual source characteristics;
- (C) Previous water quality information;
- (D) Status of monitoring waiver applications; and
- (E) Other information deemed necessary by the department.

(d) Composite samples:

(i) ((In accordance with)) Under 40 CFR 141.23 (a)(4), purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance; and

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(e) When the purveyor provides treatment for one or more inorganic chemical or physical contaminants, the department may require the purveyor to sample before and after treatment. The department shall notify the purveyor if and when this additional source sampling is required.

(f) Inorganic monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an inorganic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(g) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any nonnitrate/nitrite inorganic chemical and physical monitoring requirements identified in this chapter.

(ii) Purveyors requesting a monitoring waiver shall comply with applicable subsections of 40 CFR 141.23 (b)(3), and 141.23 (c)(3)((, and 141.40 (n)(4)).

(iii) Purveyors shall update and resubmit requests for waiver renewals as applicable during each compliance cycle or period or more frequently as directed by the department.

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(h) The department may require the purveyor to repeat sample for confirmation of results.

(i) Purveyors with emergency and seasonal sources shall monitor those sources when they are in use.

(5) Lead and copper. Monitoring for lead and copper shall be conducted in accordance with 40 CFR 141.86 (a) - (f), 141.87, and 141.88.

(6) ((Trihalomethanes (THMs)-

(a) Purveyors of **community** systems serving at least ten thousand people and providing water treated with chlorine or other halogenated disinfectant shall monitor as follows:

(i) Ground water sources. ~~Until December 31, 2003, the purveyor shall collect one sample from each treated ground water source every twelve months. This sample shall be taken at the source before treatment and analyzed for maximum total trihalomethane potential (MTTP). The purveyor may receive approval from the department for an alternate sample location if it would provide essentially the same information as an MTTP analysis regarding the levels of THMs that the consumers are, or could potentially be, exposed to in the drinking water. Beginning January 1, 2004, systems that add a chemical disinfectant shall meet the monitoring requirements in subsection (7) of this section.~~

(ii) Surface water sources. The purveyor shall meet the monitoring requirements in subsection (7) of this section.

(iii) Purchased surface water sources. Purveyors of consecutive systems that add a chemical disinfectant to either the surface water they purchase, or to additional ground water supplies they use, shall meet the monitoring requirements in subsection (7) of this section.

(b) ~~Until December 31, 2003, purveyors of **community** systems shall monitor for TTHM(s) when serving a population less than ten thousand and providing surface water treated with chlorine or other halogenated disinfectant. The purveyor shall collect one water sample per treated source every three months for one year. The sample shall be taken at the extreme end of the distribution system and analyzed for TTHM(s). After the first year, the purveyor shall monitor surface water sources every thirty six months. Beginning January 1, 2004, systems that add a chemical disinfectant shall meet the monitoring requirements in subsection (7) of this section.~~

(c) ~~Until December 31, 2003, purveyors of **community** systems shall monitor for TTHM(s) when serving less than ten thousand people and purchasing surface water treated with chlorine or other halogenated disinfectant or adding a halogenated disinfectant after purchase. The purveyor shall collect one water sample every three months at the extreme end of the distribution system or at a department acceptable location. The sample shall be analyzed for TTHM(s). After the first year, the purveyor shall monitor every thirty six months. Beginning January 1, 2004, systems that add a chemical disinfectant to either the surface water they purchase, or to additional ground water supplies they use, shall meet the monitoring requirements in subsection (7) of this section.~~

(d) ~~After December 31, 2003, subsection (6) of this section no longer applies to any public water system.~~

(7)) Disinfection by-products (DBP), disinfectant residuals, and disinfection by-product precursors (DBPP). Pur-

veyors of community and NTNC systems providing water treated with chemical disinfectants and TNC systems using chlorine dioxide shall monitor as follows:

(a) General requirements.

(i) Systems shall collect samples during normal operating conditions.

(ii) All monitoring shall be conducted in accordance with the analytical requirements in 40 CFR 141.131.

(iii) Systems may consider multiple wells drawing from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with department approval in accordance with department guidance.

(iv) Systems required to monitor under this subsection shall prepare and implement a monitoring plan in accordance with 40 CFR 141.132(f).

(A) Community and NTNC surface water systems that add a chemical disinfectant and serve at least ten thousand people shall submit a monitoring plan to the department.

(B) Community and NTNC surface water systems that add a chemical disinfectant and serve less than ten thousand people, but more than three thousand three hundred people, shall submit a monitoring plan to the department ((by April 10, 2004)).

(C) The department may require submittal of a monitoring plan from systems not specified in subsection ((7)) (6)(a)(iv)(A) or (B) of this section, and may require revision of any monitoring plan.

(D) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the systems' failure to monitor makes it impossible to determine compliance with MCL's or MRDL's.

(b) Disinfection by-products - **Community** and NTNC systems only.

(i) ((Compliance dates:

(A) A system that is installing Granular Activated Carbon (GAC) with a minimum ten minutes of empty bed contact time (GAC10) or membrane technology to comply with WAC 246-290-310(5) may apply to the department for an extension of time to comply with this subsection. The extension may not go beyond December 31, 2003.

(B) Surface water systems that serve less than ten thousand people, or systems using only ground water, and that add a chemical disinfectant, including, but not limited to, chlorine, chloramines, chlorine dioxide, and/or ozone, shall comply with the applicable requirements of this subsection beginning January 1, 2004.

(ii)) TTHMs and HAA5.

(A) Systems shall monitor for TTHMs and HAA5 in accordance with 40 CFR 141.132 (b)(1)(i).

(B) With department approval, systems may reduce monitoring in accordance with 40 CFR 141.132 (b)(1)(ii).

(C) Systems on department-approved reduced monitoring schedules may be required to return to routine monitoring, or initiate increased monitoring in accordance with 40 CFR 141.132 (b)(1)(iii).

(D) The department may return systems on increased monitoring to routine monitoring if, after one year, annual

average results for TTHMs and HAA5 are less than or equal to 0.060 mg/L and 0.045 mg/L, respectively, or monitoring results are consistently below the MCLs indicating that increased monitoring is no longer necessary.

~~((iii))~~ (ii) Chlorite - Only systems that use **chlorine dioxide**.

(A) Systems using chlorine dioxide shall conduct daily and monthly monitoring in accordance with 40 CFR 141.132 (b)(2)(i) and additional chlorite monitoring in accordance with 40 CFR 141.132 (b)(2)(ii).

(B) With department approval, monthly monitoring may be reduced in accordance with 40 CFR 141.132 (b)(2)(iii)(B). Daily monitoring at entry to distribution required by 40 CFR 141.132 (b)(2)(i)(A) may not be reduced.

~~((iv))~~ (iii) Bromate - Only systems that use **ozone**.

(A) Systems using ozone for disinfection or oxidation must conduct bromate monitoring in accordance with 40 CFR 141.132 (b)(3)(i).

(B) With department approval, monthly bromate monitoring may be reduced to once per quarter~~(s)~~ in accordance with ~~((the provisions and requirements of))~~ 40 CFR 141.132 (b)(3)(ii) and 40 CFR 141.132(e).

(c) Disinfectant residuals.

(i) ~~((Compliance dates.~~

~~(A) Community and NTNC surface water systems that add a chemical disinfectant, including, but not limited to, chlorine, chloramines, chlorine dioxide, and/or ozone, and serve less than ten thousand people, or systems using only ground water, shall comply with the applicable requirements of this section beginning January 1, 2004.~~

~~(B) TNC surface water systems that add chlorine dioxide as a disinfectant or oxidant, and serve less than ten thousand people, or systems using only ground water, shall comply with the chlorine dioxide MRDL beginning January 1, 2004.~~

~~((ii))~~ Chlorine and chloramines. Systems that use chlorine or chloramines shall monitor and record the residual disinfectant level in the distribution system ~~((in accordance with))~~ under WAC 246-290-451(6), 246-290-664 (6)(a), or 246-290-694 (8)(a).

~~((iii))~~ (ii) Chlorine dioxide. Community, NTNC, or TNC systems that use chlorine dioxide shall monitor in accordance with 40 CFR 141.132 (c)(2) and record results.

(d) Disinfection by-product precursors.

~~((i) Compliance dates.~~

~~Community and NTNC surface water systems serving less than ten thousand people using conventional filtration that employs sedimentation shall comply with the applicable requirements of this subsection beginning January 1, 2004.~~

~~((ii))~~ Surface water systems that use conventional filtration with sedimentation shall monitor ~~((in accordance with))~~ under 40 CFR 141.132(d), and meet the requirements of 40 CFR 141.135.

~~((8))~~ (7) Organic chemicals.

(a) Purveyors of community and NTNC water systems shall comply with monitoring requirements ~~((in accordance with))~~ under 40 CFR 141.24 (a) - (d), 141.24 (f)(1) - (f)(15), 141.24 (f)(18) - (19), 141.24 (f)(21), 141.24 (g)(1) - (9), 141.24 (g)(12) - (14), 141.24 (h)(1) - (11), and 141.24 (h)(14) - (17)~~((, 141.40(a), 141.40(d), and 141.40(e)))~~.

(b) Sampling locations shall be as defined in 40 CFR 141.24(f), 141.24(g), 141.24(h), and 141.40(b) ~~((and 141.40(e)))~~.

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) ~~((In accordance with))~~ Under 40 CFR 141.24 (f)(3) and 141.24 (h)(3), alternate sampling locations may be allowed if approved by the department. These alternate locations are described in department guidance. Purveyors may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. The alternate sampling location shall consider the following:

(A) Source vulnerability;

(B) An updated organic monitoring plan showing location of all sources with current and proposed sampling locations;

(C) Individual source characteristics;

(D) Previous water quality information;

(E) Status of monitoring waiver applications; and

(F) Other information deemed necessary by the department.

(c) Composite samples:

(i) Purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance;

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(d) The department may require the purveyor to sample both before and after treatment for one or more organic contaminants. The department shall notify the purveyor if and when this additional source sampling is required.

(e) Organic chemical monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an organic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(f) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any organic monitoring requirement except those relating to unregulated VOCs;

(ii) Purveyors requesting a monitoring waiver shall comply with 40 CFR 141.24 (f)(7), 141.24 (f)(10), 141.24 (h)(6), and 141.24 (h)(7) ~~((or 141.40(n)(4)))~~;

(iii) Purveyors shall update and resubmit requests for waiver renewals as directed by the department; and

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(g) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of this section when they are actively providing water to consumers.

~~((9)) Unregulated chemicals.~~

~~(a) Unregulated inorganic contaminants. Purveyors of community and NTNC systems shall:~~

~~(i) Monitor for the unregulated inorganic chemicals listed in 40 CFR 141.40 (n)(12);~~

~~(ii) Comply with monitoring methods, frequencies, and sampling locations in accordance with 40 CFR 141.40 (n)(2) through 141.40 (n)(9) and 141.40 (n)(12); and~~

~~(iii) Apply in writing for a monitoring waiver according to the conditions outlined in 40 CFR 141.40 (n)(3), and the departmental procedures described in subsection (8)(f) of this section.~~

~~(b) Unregulated VOCs. Purveyors shall:~~

~~(i) Monitor in accordance with 40 CFR 141.40(e) and 141.40(j);~~

~~(ii) Comply with monitoring methods, frequency and sampling locations in accordance with 40 CFR 141.40(a) through 141.40(d), 141.40(g) and 141.40(i); and~~

~~(iii) Perform repeat monitoring for these compounds in accordance with 40 CFR 141.40(l).~~

~~(c) Unregulated SOCs. Purveyors shall:~~

~~(i) Monitor for the unregulated SOCs listed in 40 CFR 141.40 (n)(11); and~~

~~(ii) Comply with monitoring methods, frequencies, and sampling locations in accordance with 40 CFR 141.40 (n)(1) through 141.40 (n)(9).~~

~~Purveyors may request that the department defer this monitoring if a system has less than one hundred fifty service connections.~~

~~(d) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of this section whenever they are actively providing water to consumers.~~

~~((10)) (8) Radionuclides. Monitoring for radionuclides shall be conducted ((in accordance with)) under 40 CFR 141.26.~~

~~((11)) (9) Cryptosporidium and E. coli source monitoring. Purveyors with surface water or GWI sources shall monitor the sources in accordance with 40 CFR 141.701 and 702.~~

~~(10) Other substances.~~

On the basis of public health concerns, the department may require the purveyor to monitor for additional substances.

Sample Type	Sample Location
<u>Cryptosporidium and E. coli (Source Water) - WAC 246-290-630(16)</u>	<u>Under 40 CFR 141.703.</u>
Complete Inorganic Chemical & Physical	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Lead/Copper	From the distribution system at targeted sample tap locations.
Nitrate/Nitrite	From a point representative of the source, after treatment, and prior to entry to the distribution system.
<del>((Total Trihalomethanes - Surface Water (WAC 246-290-300(6) only)</del>	<del>From points at extreme end, and at intermediate locations, in the distribution system from the source after treatment.</del>
<del>Potential Trihalomethanes - Ground Water (WAC 246-290-300(6) only)</del>	<del>From the source before treatment.))</del>
<del>Disinfection By-Products - TTHMs and HAA5 - WAC 246-290-300(((7))) (6)</del>	<del>((In accordance with)) Under 40 CFR 141.132 (b)(1).</del>
<del>Disinfection By-Products - Chlorite (Systems adding chlorine dioxide)</del>	<del>((In accordance with)) Under 40 CFR 141.132 (b)(2).</del>
<del>Disinfection By-Products - Bromate (Systems adding ozone)</del>	<del>((In accordance with)) Under 40 CFR 141.132 (b)(3).</del>
<del>Disinfectant Residuals - Chlorine and Chloramines</del>	<del>((In accordance with)) Under 40 CFR 141.132 (c)(1).</del>
<del>Disinfectant Residuals - Chlorine dioxide</del>	<del>((In accordance with)) Under 40 CFR 141.132 (c)(2).</del>
<del>Disinfection Precursors - Total Organic Carbon (TOC)</del>	<del>((In accordance with)) Under 40 CFR 141.132(d).</del>
<del>Disinfection Precursors - Bromide (Systems using ozone)</del>	<del>From the source before treatment.</del>
Radionuclides	From a point representative of the source, after treatment and prior to entry to distribution system.
Organic Chemicals (VOCs & SOCs)	From a point representative of the source, after treatment and prior to entry to distribution system.
Other Substances (unregulated chemicals)	From a point representative of the source, after treatment, and prior to entry to the distribution system, or as directed by the department.

TABLE 3  
MONITORING LOCATION

Sample Type	Sample Location
Asbestos	One sample from distribution system or if required by department, from the source.
Bacteriological	From representative points throughout distribution system.

**AMENDATORY SECTION** (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-310 Maximum contaminant levels (MCLs) and maximum residual disinfectant levels (MRDLs).** (1) General.



(a) The purveyor shall be responsible for complying with the standards of water quality identified in this section. If a substance exceeds its (~~maximum contaminant level~~) MCL(~~( $\pm$ )~~) or its maximum residual disinfectant level (MRDL), the purveyor shall take follow-up action (~~(in accordance with)~~) under WAC 246-290-320.

(b) When enforcing the standards described under this section, the department shall enforce compliance with the primary standards as its first priority.

(2) Bacteriological.

(a) MCLs under this subsection shall be considered primary standards.

(b) (~~Notwithstanding subsection (1) of this section,~~) If coliform presence is detected in any sample, the purveyor shall take follow-up action (~~(in accordance with)~~) under WAC 246-290-320(2).

(c) Acute MCL. An acute MCL for coliform bacteria occurs when there is:

(i) Fecal coliform presence in a repeat sample;

(ii) *E. coli* presence in a repeat sample; or

(iii) Coliform presence in any repeat samples collected as a follow-up to a sample with fecal coliform or *E. coli* presence.

Note: For the purposes of the public notification requirements in Part 7, Subpart A of this chapter, an acute MCL is a violation that requires Tier 1 public notification.

(d) Nonacute MCL. A nonacute MCL for coliform bacteria occurs when:

(i) Systems taking less than forty routine samples during the month have more than one sample with coliform presence; or

(ii) Systems taking forty or more routine samples during the month have more than 5.0 percent with coliform presence.

(e) MCL compliance. The purveyor shall determine compliance with the coliform MCL for each month the system provides drinking water to the public. In determining MCL compliance, the purveyor shall:

(i) Include:

(A) Routine samples; and

(B) Repeat samples.

(ii) Not include:

(A) Samples invalidated under WAC 246-290-320(2)(d); and

(B) Special purpose samples.

(3) Inorganic chemical and physical.

(a) The primary and secondary MCLs are listed in Table 4 and 5:

TABLE 4  
INORGANIC CHEMICAL CHARACTERISTICS

Substance	Primary MCLs (mg/L)
Antimony (Sb)	0.006
Arsenic (As)	0.010*
Asbestos	7 million fibers/liter (longer than 10 microns)
Barium (Ba)	2.0
Beryllium (Be)	0.004

Substance	Primary MCLs (mg/L)
Cadmium (Cd)	0.005
Chromium (Cr)	0.1
Copper (Cu)	**
Cyanide (HCN)	0.2
Fluoride (F)	4.0
Lead (Pb)	**
Mercury (Hg)	0.002
Nickel (Ni)	0.1
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Selenium (Se)	0.05
Sodium (Na)	**
Thallium (Tl)	0.002

Substance	Secondary MCLs (mg/L)
Chloride (Cl)	250.0
Fluoride (F)	2.0
Iron (Fe)	0.3
Manganese (Mn)	0.05
Silver (Ag)	0.1
Sulfate (SO <sub>4</sub> )	250.0
Zinc (Zn)	5.0

Note\* Does not apply to TNC systems. (~~With regard to community and NTNC water systems, new systems or systems that use a new source of water, certified as complete in accordance with WAC 246-290-120(5) after January 22, 2004, must demonstrate compliance with this MCL within a period of time specified by the department.~~)

~~With regard to existing community and NTNC water systems, this arsenic MCL is effective January 23, 2006, for the purpose of compliance. Until that time, the MCL is 0.05 mg/L.)~~

Note\*\* Although the state board of health has not established MCLs for copper, lead, and sodium, there is sufficient public health significance connected with copper, lead, and sodium levels to require inclusion in inorganic chemical and physical source monitoring. For lead and copper, the EPA has established distribution system related levels at which a system is required to consider corrosion control. These levels, called "action levels," are 0.015 mg/L for lead and 1.3 mg/L for copper and are applied to the highest concentration in ten percent of all samples collected from the distribution system. The EPA has also established a recommended level of twenty mg/L for sodium as a level of concern for those consumers that may be restricted for daily sodium intake in their diets.

TABLE 5  
PHYSICAL CHARACTERISTICS

Substance	Secondary MCLs
Color	15 Color Units
Specific Conductivity	700 umhos/cm
Total Dissolved Solids (TDS)	500 mg/L

(b) Compliance with the MCLs, except for nitrate and nitrite, in this subsection is determined by a running annual average at each sampling point. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling and at least one sampling point is in violation of the MCL. If one sampling point is in violation of the MCL, the system is in violation of the MCL.

(i) If any sample will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(ii) If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected.

(iii) If a sample result is less than the detection limit, zero will be used to calculate the running annual average.

(c) Compliance with the MCLs for nitrate and nitrite is determined based on one sample if the levels of these contaminants are below the MCLs as determined under Table 4 of this section. If the levels of nitrate or nitrite exceed the MCLs in the initial sample, a confirmation sample is required under 40 CFR 141.23 (f)(2), and compliance shall be determined based on the average of the initial and confirmation samples.

~~(4) (Trihalomethanes:~~

~~(a) The department shall consider standards under this subsection primary standards.~~

~~(b) The MCL for total trihalomethanes (TTHMs) is 0.10 mg/L calculated on the basis of a running annual average of quarterly samples. The concentrations of each of the trihalomethane compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) are totaled to determine the TTHM level.~~

~~(c) There is no MCL for maximum total trihalomethane potential (MTTP). When the MTTP value exceeds 0.10 mg/L, the purveyor shall follow up as described under WAC 246-290-320(6).~~

~~(d) The MCL for total trihalomethanes in this subsection applies only to monitoring required under WAC 246-290-300(6). After December 31, 2003, this section no longer applies to any public water system.~~

~~(5)) Disinfection by-products.~~

(a) The department shall consider standards under this subsection as primary standards. The MCLs in this subsection apply to monitoring required by WAC 246-290-300 ~~((7))~~ (6).

(b) The MCLs for disinfection by-products are as follows:

Disinfection By-Product	MCL (mg/L)
Total Trihalomethanes (TTHMs)	0.080
Haloacetic acids (five) (HAA5)	0.060
Bromate	0.010
Chlorite	1.0

(c) Whether a system has exceeded MCLs shall be determined in accordance with 40 CFR 141.133.

~~((6))~~ (5) Disinfectant residuals.

(a) The department shall consider standards under this subsection primary standards. The MRDLs in this subsection apply to monitoring required by WAC 246-290-300 ~~((7))~~ (6).

(b) The MRDL for disinfectants is as follows:

Disinfectant Residual	MRDL (mg/L)
Chlorine	4.0 (as Cl <sub>2</sub> )
Chloramines	4.0 (as Cl <sub>2</sub> )
Chlorine Dioxide	0.8 (as ClO <sub>2</sub> )

(c) Whether a system has exceeded MRDLs shall be determined in accordance with 40 CFR 141.133.

~~((7))~~ (6) Radionuclides.

(a) The department shall consider standards under this subsection primary standards.

(b) The MCLs for radium-226 and radium-228, gross alpha particle activity, beta particle and photon radioactivity, and uranium shall be as listed in 40 CFR 141.66.

~~((8))~~ (7) Organic chemicals.

(a) The department shall consider standards under this subsection primary standards.

(b) VOCs.

(i) The MCLs for VOCs shall be as listed in 40 CFR 141.61(a).

(ii) The department shall determine compliance with this subsection based on compliance with 40 CFR 141.24(f).

(c) SOCs.

(i) MCLs for SOCs shall be as listed in 40 CFR 141.61(c).

(ii) The department shall determine compliance with this subsection based on compliance with 40 CFR 141.24(h).

~~((9))~~ (8) Other chemicals.

(a) The state board of health shall determine maximum contaminant levels for any additional substances.

(b) Purveyors may be directed by the department to comply with state advisory levels (SALs) for contaminants that do not have a MCL established in chapter 246-290 WAC. SALs shall be:

(i) MCLs that have been promulgated by the EPA, but which have not yet been adopted by the state board of health; or

(ii) State board of health adopted levels for substances recommended by the department and not having an EPA established MCL. A listing of these may be found in the department document titled *Procedures and References for the Determination of State Advisory Levels for Drinking Water Contaminants* dated June 1996, that has been approved by the state board of health and is available.

AMENDATORY SECTION (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-320 Follow-up action.** (1) General.

(a) When an MCL or MRDL violation or exceedance occurs, the purveyor shall take follow-up action as described in this section.

(b) When a primary standard violation occurs, the purveyor shall:

(i) Notify the department (~~(in accordance with)~~) under WAC 246-290-480;

(ii) Notify the consumers served by the system and the owner or operator of any consecutive system served in accordance with 40 CFR 141.201 through 208, and Part 7, Subpart A of this chapter;

(iii) Determine the cause of the contamination; and

(iv) Take action as directed by the department.

(c) When a secondary standard violation occurs, the purveyor shall notify the department and take action as directed by the department.

(d) The department may require additional sampling for confirmation of results.

(2) Bacteriological.

(a) When coliform bacteria are present in any sample and the sample is not invalidated under (d) of this subsection, the purveyor shall ensure the following actions are taken:

(i) The sample is analyzed for fecal coliform or *E. coli*. When a sample with a coliform presence is not analyzed for *E. coli* or fecal coliforms, the sample shall be considered as having a fecal coliform presence for MCL compliance purposes;

(ii) Repeat samples are collected in accordance with (b) of this subsection;

(iii) The department is notified in accordance with WAC 246-290-480; and

(iv) The cause of the coliform presence is determined and corrected.

(b) Repeat samples.

(i) The purveyor shall collect repeat samples in order to confirm the original sample results and to determine the cause of the coliform presence. Additional treatment, such as batch or shock chlorination, shall not be instituted prior to the collection of repeat samples unless prior authorization by the department is given. Following collection of repeat samples, and before the analytical results are known, there may be a need to provide interim precautionary treatment or other means to insure public health protection. The purveyor shall contact the department to determine the best interim approach in this situation.

(ii) The purveyor shall collect and submit for analysis a set of repeat samples for every sample in which the presence of coliforms is detected. A set of repeat coliform samples consists of:

(A) Four repeat samples for systems collecting one routine coliform sample each month; or

(B) Three repeat samples for all systems collecting more than one routine coliform sample each month.

(iii) The purveyor shall collect repeat sample sets according to Table 7;

(iv) The purveyor shall collect one set of repeat samples for each sample with a coliform presence. All samples in a set of repeat samples shall be collected on the same day and submitted for analysis within twenty-four hours after notification by the laboratory of a coliform presence, or as directed by the department.

(v) When repeat samples have coliform presence, the purveyor shall:

(A) Contact the department and collect a minimum of one additional set of repeat samples as directed by the department; or

(B) Collect one additional set of repeat samples for each sample where coliform presence was detected.

(vi) The purveyor of a system providing water to consumers via a single service shall collect repeat samples from the same location as the sample with a coliform presence. The set of repeat samples shall be collected:

(A) On the same collection date;

(B) Over consecutive days with one sample collected each day until the required samples in the set of repeat samples are collected; or

(C) As directed by the department.

(vii) If a sample with a coliform presence was collected from the first two or last two active services, the purveyor shall monitor as directed by the department;

(viii) The purveyor may change a previously submitted routine sample to a sample in a set of repeat samples when the purveyor:

(A) Collects the sample within five adjacent service connections of the location from which the initial sample with a coliform presence was collected;

(B) Collects the sample after the initial sample with a coliform presence was submitted for analysis;

(C) Collects the sample on the same day as other samples in the set of repeat samples, except under (b)(iv) of this subsection; and

(D) Requests and receives approval from the department for the change.

(ix) The department may determine that sets of repeat samples specified under this subsection are not necessary during a month when a nonacute coliform MCL violation is determined for the system.

**Table 7**  
**REPEAT SAMPLE REQUIREMENTS**

# OF ROUTINE SAMPLES COLLECTED EACH MONTH	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
1	4	<ul style="list-style-type: none"> <li>◆ Site of previous sample with a coliform presence</li> <li>◆ Within 5 active services upstream of site of sample with a coliform presence</li> <li>◆ Within 5 active services downstream of site of sample with a coliform presence</li> <li>◆ At any other active service or from a location most susceptible to contamination (i.e., well or reservoir)</li> </ul>
more than 1	3	<ul style="list-style-type: none"> <li>◆ Site of previous sample with a coliform presence</li> <li>◆ Within 5 active services upstream of site of sample with a coliform presence</li> <li>◆ Within 5 active services downstream of site of sample with a coliform presence</li> </ul>

(c) Monitoring frequency following a coliform presence. Systems having one or more coliform presence samples that were not invalidated during the previous month shall collect and submit for analysis the minimum number of samples shown in the last column of Table 2.

(i) The purveyor may obtain a reduction in the monitoring frequency requirement when one or more samples with a coliform presence were collected during the previous month, if the purveyor proves to the satisfaction of the department;

(A) The cause of the sample with a coliform presence; and

(B) The problem is corrected before the end of the next month the system provides water to the public.

(ii) If the monitoring frequency requirement is reduced, the purveyor shall collect and submit at least the minimum number of samples required when no samples with a coliform presence were collected during the previous month.

(d) Invalid samples. Coliform samples may be determined to be invalid under any of the following conditions:

(i) A certified laboratory determines that the sample results show:

(A) Multiple tube technique cultures that are turbid without appropriate gas production;

(B) Presence-absence technique cultures that are turbid in the absence of an acid reaction;

(C) Occurrence of confluent growth patterns or growth of TNTC (too numerous to count) colonies without a surface sheen using a membrane filter analytic technique;

(ii) The analyzing laboratory determines there is excess debris in the sample.

(iii) The analyzing laboratory establishes that improper sample collection or analysis occurred;

(iv) The department determines that a nondistribution system problem has occurred as indicated by:

(A) All samples in the set of repeat samples collected at the same location, including households, as the original coliform presence sample also are coliform presence; and

(B) All other samples from different locations (households, etc.) in the set of repeat samples are free of coliform.

(v) The department determines a coliform presence result is due to a circumstance or condition that does not reflect water quality in the distribution system.

(e) Follow-up action when an invalid sample is determined. The purveyor shall take the following action when a coliform sample is determined to be invalid:

(i) Collect and submit for analysis an additional coliform sample from the same location as each invalid sample within twenty-four hours of notification of the invalid sample; or

(ii) In the event that it is determined that the invalid sample resulted from circumstances or conditions not reflective of distribution system water quality, collect a set of samples in accordance with Table 7; and

(iii) Collect and submit for analysis samples as directed by the department.

(f) Invalidated samples shall not be included in determination of the sample collection requirement for compliance with this chapter.

(3) Inorganic chemical and physical follow-up monitoring shall be conducted in accordance with the following:

(a) For nonnitrate/nitrite primary inorganic chemicals, 40 CFR 141.23 (a)(4), 141.23 (b)(8), 141.23 (c)(7), 141.23 (c)(9), 141.23 (f)(1), 141.23(g), 141.23(m) and 141.23(n);

(b) For nitrate, 40 CFR 141.23 (a)(4), 141.23 (d)(2), 141.23 (d)(3), 141.23 (f)(2), 141.23(g), 141.23(m), 141.23(n), and 141.23(o);

(c) For nitrite, 40 CFR 141.23 (a)(4), 141.23 (e)(3), 141.23 (f)(2), and 141.23(g); or

(d) The purveyor of any public water system providing service that has secondary inorganic MCL exceedances shall take follow-up action as required by the department. Follow-up action shall be commensurate with the degree of consumer acceptance of the water quality and their willingness to bear the costs of meeting the secondary standard. For new community water systems and new nontransient noncommunity water systems without active consumers, treatment for secondary contaminant MCL exceedances will be required.

(4) Lead and copper follow-up monitoring shall be conducted in accordance with 40 CFR 141.85(d), 141.86 (d)(2), 141.86 (d)(3), 141.87(d) and 141.88(b) through 141.88(d).

(5) Turbidity.

Purveyors monitoring turbidity in accordance with Part 6 of this chapter shall provide follow-up ((in accordance with)) under WAC 246-290-634.

~~(6) ((Trihalomethanes. For public water systems subject to WAC 246-290-300(6):~~

~~(a) When the average of all samples taken during any twelve-month period exceeds the MCL for total trihalomethanes as referenced in WAC 246-290-310(4)(b), the violation is confirmed and the purveyor shall take corrective action as required by the department, and consistent with 40 CFR 141.30 (b)(3). When the maximum trihalomethane potential (MTTP) result is equal to or greater than 0.10 mg/L and the result is confirmed by a promptly collected repeat sample, the purveyor shall provide for additional monitoring and take action as directed by the department.~~

~~(7)) Organic chemicals. Follow-up monitoring shall be conducted in accordance with the following:~~

~~(a) For VOCs, 40 CFR 141.24 (f)(11) through 141.24 (f)(15), and 141.24 (f)(22); or~~

~~(b) For SOCs, 40 CFR 141.24(b), 141.24(c) and 141.24 (h)(7) through 141.24 (h)(11), and 141.24 (h)(20).~~

~~((8) Unregulated inorganic and organic chemicals.~~

~~(a) Follow-up monitoring shall be conducted in accordance with 40 CFR 141.40 (n)(8) and 141.40 (n)(9).~~

~~(b) When an unregulated chemical is verified at a concentration above the detection limit, the purveyor shall:~~

~~(i) Submit the sample analysis results to the department within seven days of receipt from the laboratory; and~~

~~(ii) Sample the source a minimum of once every three months for one year and then annually thereafter during the three-month period when the highest previous measurement occurred.~~

~~(c) If the department determines that an unregulated chemical is verified at a level greater than a SAL, the department shall notify the purveyor in writing. The purveyor shall repeat sample the source as soon as possible after initial department notice that a SAL has been exceeded. The purveyor shall submit the analysis results to the department within seven days of receipt from the laboratory. If any~~

repeat sample confirms that a SAL has been exceeded, the purveyor shall:

~~(i) Provide consumer information in accordance with Part 7, Subpart A of this chapter;~~

~~(ii) Investigate the cause of the contamination; and~~

~~(iii) Take follow-up or corrective action as required by the department.~~

~~(d) The department may reduce the purveyor's monitoring requirement for a source detecting an unregulated chemical if the source has been monitored annually for at least three years, and all analysis results are less than the SAL.~~

~~(9)) (7) Radionuclide follow-up monitoring shall be conducted ((in accordance with)) under 40 CFR 141.26 (a)(2)(iv), 141.26 (a)(3)(ii) through (v), 141.26 (a)(4), 141.26 (b)(6), and 141.26 (c)(5).~~

~~((10)) (8) The department shall determine the purveyor's follow-up action when a substance not included in this chapter is detected.~~

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-470 Uncovered ((distribution reservoirs)) finished water storage facilities.** (1) Existing uncovered ((distribution reservoirs)) finished water storage facilities shall be operated based on a plan of operation approved by the department.

(2) Purveyors with uncovered ((distribution reservoirs)) finished water storage facilities shall have a department-approved plan and schedule to cover all reservoirs on file with the department.

(3) The plan of operation shall address the following elements as a minimum:

(a) Assurance of the means and levels associated with the provision of continuous disinfection at all times water is being delivered to the public, including the reliability provisions outlined in WAC 246-290-420;

(b) Description of the means for control of debris, algal, or other aquatic organism growths, surface water runoff, and atmospheric or avian-borne airborne contamination;

(c) Procedures for ensuring that construction will not lead to reservoir contamination;

(d) Provisions for ensuring adequate security measures are provided; and

(e) Any required, or department-directed, monitoring and reporting.

(4) Systems using uncovered finished water reservoirs must comply with 40 CFR 141.714.

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

**WAC 246-290-480 Recordkeeping and reporting.** (1) Records. The purveyor shall keep the following records of operation and water quality analyses:

(a) Bacteriological and turbidity analysis results shall be kept for five years. Chemical analysis results shall be kept for as long as the system is in operation. Records of source meter readings shall be kept for ten years. Other records of operation and analyses required by the department shall be kept for three years. All records shall bear the signature of

the operator in responsible charge of the water system or his or her representative. Systems shall keep these records available for inspection by the department and shall send the records to the department if requested. Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(i) The date, place, and time of sampling, and the name of the person collecting the sample;

(ii) Identification of the sample type (routine distribution system sample, repeat sample, source or finished water sample, or other special purpose sample);

(iii) Date of analysis;

(iv) Laboratory and person responsible for performing analysis;

(v) The analytical method used; and

(vi) The results of the analysis.

(b) Records of action taken by the system to correct violations of primary drinking water standards. For each violation, records of actions taken to correct the violation, and copies of public notifications shall be kept for no less than three years after the last corrective action taken.

(c) Copies of any written reports, summaries, or communications relating to sanitary surveys or SPIs of the system conducted by system personnel, by a consultant or by any local, state, or federal agency, shall be kept for ten years after completion of the sanitary survey or SPI involved.

(d) Copies of project reports, construction documents and related drawings, inspection reports and approvals shall be kept for the life of the facility.

(e) Where applicable, records of the following shall be kept for a minimum of three years:

(i) Chlorine residual;

(ii) Fluoride level;

(iii) Water treatment plant performance including, but not limited to:

(A) Type of chemicals used and quantity;

(B) Amount of water treated; ~~((and))~~

(C) Results of analyses((-); and

(iv) ~~((Turbidity;~~

~~(v) Source meter readings; and~~

~~(vi))~~ Other information as specified by the department.

(f) The purveyor shall retain copies of public notices made ~~((in accordance with))~~ under Part 7, Subpart A of this chapter and certifications made to the department under 40 CFR 141.33(e) for a period of at least three years after issuance.

(g) Purveyors using conventional, direct, or in-line filtration that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within their treatment plant shall, beginning no later than June 8, 2004, collect and retain on file the following information for review and evaluation by the department:

(i) A copy of the recycle notification and information submitted to the department ~~((in accordance with))~~ under WAC 246-290-660 (4)(a)(i).

(ii) A list of all recycle flows and the frequency with which they are returned.

(iii) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(iv) Typical filter run length and a written summary of how filter run length is determined.

(v) The type of treatment provided for the recycle flow.

(vi) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(h) Purveyors required to conduct disinfection profiling and benchmarking ~~((in accordance with))~~ under 40 CFR 141.530 through 141.544 shall retain the results on file indefinitely.

(i) Purveyors using surface water or GWI sources must keep the records required by 40 CFR 141.722.

(2) Reporting.

(a) Unless otherwise specified in this chapter, the purveyor shall report to the department within forty-eight hours the failure to comply with any national primary drinking water regulation (including failure to comply with any monitoring requirements) as set forth in this chapter. For violations assigned to Tier 1 in WAC 246-290-71001, the department must be notified as soon as possible, but no later than twenty-four hours after the violation is known.

(b) The purveyor shall submit to the department reports required by this chapter, including tests, measurements, and analytic reports. Monthly reports are due before the tenth day of the following month, unless otherwise specified in this chapter.

(c) The purveyor shall submit to the department copies of any written summaries or communications relating to the status of monitoring waivers during each monitoring cycle or as directed by the department.

(d) Source meter readings shall be made available to the department.

(e) Water facilities inventory form (WFI).

(i) Purveyors of **community** and **NTNC** systems shall submit an annual WFI update to the department;

(ii) Purveyors of **TNC** systems shall submit an updated WFI to the department as requested;

(iii) Purveyors shall submit an updated WFI to the department within thirty days of any change in name, category, ownership, or responsibility for management of the water system, or addition of source or storage facilities; and

(iv) At a minimum the completed WFI shall provide the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system.

(f) Bacteriological. The purveyor shall notify the department of the presence of:

(i) Coliform in a sample, within ten days of notification by the laboratory; and

(ii) Fecal coliform or *E. coli* in a sample, by the end of the business day in which the purveyor is notified by the laboratory. If the purveyor is notified of the results after normal close of business, then the purveyor shall notify the department before the end of the next business day.

~~(g) ((Systems monitoring for unregulated contaminants in accordance with WAC 246-290-300(9)), shall send a copy of the monitoring results to the department within thirty days of receipt of analytical results.~~

~~((h))~~ Systems monitoring for disinfection by-products ~~((in accordance with))~~ under WAC 246-290-300~~((7))~~ (6) shall report information to the department as specified in 40 CFR 141.134.

~~((h))~~ (h) Systems monitoring for disinfectant residuals ~~((in accordance with))~~ under WAC 246-290-300~~((7))~~ (6) shall report information to the department as specified in subsection (2)(a) of this section, and 40 CFR 141.134~~((e))~~ (b).

~~((i))~~ (i) Systems required to monitor for disinfection by-product precursor removal ~~((in accordance with))~~ under WAC 246-290-300~~((7))~~ (6) shall report information to the department as specified in 40 CFR 141.134(d).

~~((k))~~ (j) Systems subject to the enhanced treatment requirements for *Cryptosporidium* under WAC 246-290-630(4) shall report information to the department as specified in 40 CFR 141.706 and 141.721.

(k) Systems that use acrylamide and epichlorohydrin in the treatment of drinking water, must certify annually in writing to the department that the combination (or product) of dose and monomer level does not exceed the levels specified in (k)(i) and (ii) of this subsection. Certifications shall reference maximum use levels established by an ANSI-accredited listing organization approved by the department.

(i) Acrylamide = 0.05 percent dosed at 1 ppm (or equivalent); and

(ii) Epichlorohydrin = 0.01 percent dosed at 20 ppm (or equivalent).

(l) Use of products that exceed the specified levels constitutes a treatment technique violation and the public must be notified under the public notice requirements under Part 7, Subpart A of this chapter.

(m) Systems shall submit to the department, in accordance with 40 CFR 141.31(d), a certification that the system has complied with the public notification regulations (Part 7, Subpart A of this chapter) when a public notification is required. Along with the certification, the system shall submit a representative copy of each type of notice.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-490 Cross-connection control.** (1) Applicability, purpose, and responsibility.

(a) All community water systems shall comply with the cross-connection control requirements specified in this section.

(b) All noncommunity water systems shall apply the principles and provisions of this section, including subsection (4)(b) of this section, as applicable to protect the public water system from contamination via cross-connections. Noncommunity systems that comply with subsection (4)(b) of this section and the provisions of WAC 51-56-0600 of the UPC (which addresses the installation of backflow preventers at points of water use within the potable water system) shall be considered in compliance with the requirements of this section.

(c) The purpose of the purveyor's cross-connection control program shall be to protect the public water system, as defined in WAC 246-290-010, from contamination via cross-connections.

(d) The purveyor's responsibility for cross-connection control shall begin at the water supply source, include all the public water treatment, storage, and distribution facilities, and end at the point of delivery to the consumer's water system, which begins at the downstream end of the service connection or water meter located on the public right of way or utility-held easement.

(e) Under ~~((the provisions of))~~ this section, purveyors are not responsible for eliminating or controlling cross-connections within the consumer's water system. Under chapter 19.27 RCW, the responsibility for cross-connection control within the consumer's water system, i.e., within the property lines of the consumer's premises, ~~((falls under the jurisdiction of the local administrative authority))~~ lies with the authority having jurisdiction.

(2) General program requirements.

(a) The purveyor shall develop and implement a cross-connection control program that meets the requirements of this section, but may establish a more stringent program through local ordinances, resolutions, codes, bylaws, or operating rules.

(b) Purveyors shall ensure that good engineering and public health protection practices are used in the development and implementation of cross-connection control programs. Department publications and the most recently published editions of references, such as, but not limited to, those listed below, may be used as guidance for cross-connection program development and implementation:

(i) *Manual of Cross-Connection Control* published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (USC Manual); ~~((or))~~

(ii) *Cross-Connection Control Manual, Accepted Procedure and Practice* published by the Pacific Northwest Section of the American Water Works Association (PNWS-AWWA Manual); or

(iii) Guidance document: *Cross-connection Control for Small Water Systems* published by the department.

(c) The purveyor may implement the cross-connection control program, or any portion thereof, directly or by means of a contract with another agency or party acceptable to the department.

(d) The purveyor shall coordinate with the ~~((local administrative))~~ authority having jurisdiction in all matters concerning cross-connection control. The purveyor shall document and describe ~~((such))~~ the coordination, including delineation of responsibilities, in the written cross-connection control program required in (e) of this subsection.

(e) The purveyor shall include a written description of the cross-connection control program in the water system plan required under WAC 246-290-100 or the small water system management program required under WAC 246-290-105. The cross-connection control program shall include the minimum program elements described in subsection (3) of this section.

(f) The purveyor shall ensure that cross-connections between the distribution system and a consumer's water system are eliminated or controlled by the installation of an approved backflow preventer commensurate with the degree

of hazard. This can be accomplished by implementation of a cross-connection program that relies on:

(i) Premises isolation as defined in WAC 246-290-010; or

(ii) Premises isolation and in-premises protection as defined in WAC 246-290-010.

(g) Purveyors with cross-connection control programs that rely both on premises isolation and in-premises protection:

(i) Shall comply with the premises isolation requirements specified in subsection (4)(b) of this section; and

(ii) May reduce premises isolation requirements and rely on in-premises protection for premises other than the type ~~((not))~~ addressed in subsection (4)(b) of this section, only if the following conditions ~~((in (h) of this subsection are met.~~

~~((h))~~ Purveyors may rely on in-premises protection only when the following conditions)) are met:

~~((i))~~ (A) The in-premises backflow preventers provide a level of protection commensurate with the purveyor's assessed degree of hazard;

~~((ii))~~ (B) Backflow preventers which provide the in-premises backflow protection meet the definition of approved backflow preventers as described in WAC 246-290-010;

~~((iii))~~ (C) The approved backflow preventers are installed, inspected, tested (if applicable), maintained, and repaired in accordance with subsections (6) and (7) of this section;

~~((iv))~~ (D) Records of ~~((such))~~ the backflow preventers are maintained in accordance with subsections (3)(j) and (8) of this section; and

~~((v))~~ (E) The purveyor has reasonable access to the consumer's premises to conduct an initial hazard evaluation and periodic reevaluations to determine whether the in-premises protection is adequate to protect the purveyor's distribution system.

~~((f))~~ (h) The purveyor shall take appropriate corrective action ~~((within its authority if))~~ as authorized by the legal instrument required by subsection (3)(b) of this section, when:

(i) A cross-connection exists that is not controlled commensurate to the degree of hazard assessed by the purveyor; or

(ii) A consumer fails to comply with the purveyor's requirements regarding the installation, inspection, testing, maintenance or repair of approved backflow preventers required by this chapter.

~~((g))~~ (i) The purveyor's corrective action may include, but is not limited to:

(i) Denying or discontinuing water service to a consumer's premises until the cross-connection hazard is eliminated or controlled to the satisfaction of the purveyor;

(ii) Requiring the consumer to install an approved backflow preventer for premises isolation commensurate with the degree of hazard; or

(iii) The purveyor installing an approved backflow preventer for premises isolation commensurate with the degree of hazard.

~~((k))~~ Purveyors)) (j) Except in the event of an emergency, purveyors shall notify the authority having jurisdiction prior to denying or discontinuing water service to a con-

sumer's premises for one or more of the reasons listed in ~~((h))~~ (h) of this subsection ~~((shall notify the local administrative authority prior to taking such action except in the event of an emergency))~~.

~~((k))~~ (k) The purveyor shall prohibit the intentional return of used water to the purveyor's distribution system. ~~((Such))~~ Used water ~~((would))~~ includes, but is not limited to, water used for heating, cooling, or other purposes within the consumer's water system.

(3) Minimum elements of a cross-connection control program.

(a) To be acceptable to the department, the purveyor's cross-connection control program shall include the minimum elements identified in this subsection.

(b) Element 1: The purveyor shall adopt a local ordinance, resolution, code, bylaw, or other written legal instrument that:

(i) Establishes the purveyor's legal authority to implement a cross-connection control program;

(ii) Describes the operating policies and technical provisions of the purveyor's cross-connection control program; and

(iii) Describes the corrective actions used to ensure that consumers comply with the purveyor's cross-connection control requirements.

(c) Element 2: The purveyor shall develop and implement procedures and schedules for evaluating new and existing service connections to assess the degree of hazard posed by the consumer's premises to the purveyor's distribution system and notifying the consumer within a reasonable time frame of the hazard evaluation results. At a minimum, the program shall meet the following:

(i) For ~~((new))~~ connections made on or after ~~((the effective date of these regulations))~~ April 9, 1999, procedures shall ensure that an initial evaluation is conducted before water service is provided;

(ii) For ~~((existing))~~ connections made prior to ~~((the effective date of these regulations))~~ April 9, 1999, procedures shall ensure that an initial evaluation is conducted in accordance with a schedule acceptable to the department; and

(iii) For all service connections, once an initial evaluation has been conducted, procedures shall ensure that periodic reevaluations are conducted in accordance with a schedule acceptable to the department and whenever there is a change in the use of the premises.

(d) Element 3: The purveyor shall develop and implement procedures and schedules for ensuring that:

(i) Cross-connections are eliminated whenever possible;

(ii) When cross-connections cannot be eliminated, they are controlled by installation of approved backflow preventers commensurate with the degree of hazard; and

(iii) Approved backflow preventers are installed in accordance with the requirements of subsection (6) of this section.

(e) Element 4: The purveyor shall ensure that personnel, including at least one person certified as a CCS, are provided to develop and implement the cross-connection control program.

(f) Element 5: The purveyor shall develop and implement procedures to ensure that approved backflow preventers

relied upon to protect the public water system are inspected and/or tested (as applicable) ~~((in accordance with))~~ under subsection (7) of this section.

(g) Element 6: The purveyor shall develop and implement a backflow prevention assembly testing quality control assurance program, including, but not limited to, documentation of tester certification and test kit calibration, test report contents, and time frames for submitting completed test reports.

(h) Element 7: The purveyor shall develop and implement (when appropriate) procedures for responding to backflow incidents.

(i) Element 8: The purveyor shall include information on cross-connection control in the purveyor's existing program for educating consumers about water system operation. ~~((Such a))~~ The public education program may include periodic bill inserts, public service announcements, pamphlet distribution, notification of new consumers and consumer confidence reports.

(j) Element 9: The purveyor shall develop and maintain cross-connection control records including, but not limited to, the following:

(i) A master list of service connections and/or consumer's premises where the purveyor relies upon approved backflow preventers to protect the public water system from contamination, the assessed hazard level of each, and the required backflow preventer(s);

(ii) Inventory information on backflow preventers that protect the public water system including:

(A) Approved air gaps installed in lieu of approved assemblies including exact air gap location, assessed degree of hazard, installation date, history of inspections, inspection results, and person conducting inspections;

(B) Approved backflow assemblies including exact assembly location, assembly description (type, manufacturer, model, size, and serial number), assessed degree of hazard, installation date, history of inspections, tests and repairs, test results, and person performing tests; and

(C) Approved AVBs used for irrigation system applications including location, description (manufacturer, model, and size), installation date, history of inspection(s), and person performing inspection(s).

(iii) Cross-connection program summary reports and backflow incident reports required under subsection (8) of this section.

(k) Element 10: Purveyors who distribute and/or have facilities that receive reclaimed water within their water service area shall meet any additional cross-connection control requirements imposed by the department ~~((under))~~ in a permit issued ~~((in accordance with))~~ under chapter 90.46 RCW.

(4) Approved backflow preventer selection.

(a) The purveyor shall ensure that a CCS:

(i) Assesses the degree of hazard posed by the consumer's water system upon the purveyor's distribution system; and

(ii) Determines the appropriate method of backflow protection for premises isolation ~~((in accordance with))~~ as described in Table 8.



**TABLE 8**  
**APPROPRIATE METHODS OF BACKFLOW PROTECTION FOR**  
**PREMISES ISOLATION**

Degree of Hazard	Application Condition	Appropriate Approved Back-flow Preventer
High health cross-connection hazard	Backsiphonage or backpressure backflow	AG, RPBA, or RPDA
Low ((health)) cross-connection hazard	Backsiphonage or backpressure backflow	AG, RPBA, RPDA, DCVA, or DCDA

(b) Premises isolation requirements.

(i) The purveyor shall ensure that an approved air gap, RPBA, or RPDA is installed for premises isolation for service connections ((with remises)) to premises posing a high health cross-connection hazard including, but not limited to, those premises listed in Table 9, ((the purveyor shall ensure that an approved air gap or RPBA is installed for premises isolation)) except those premises identified as severe in (b)(ii) of this subsection.

(ii) For service connections to premises posing a severe health cross-connection hazard including wastewater treatment plants, radioactive material processing plants, and nuclear reactors, the purveyor shall ensure that either an:

(A) Approved air gap is installed for premises isolation;  
or

(B) Approved RPBA or RPDA is installed for premises isolation in combination with an in-plant approved air gap.

((iii)) (iii) If the purveyor's CCS determines that no hazard exists for a connection serving premises of the type listed in Table 9, the purveyor may grant an exception to the premises isolation requirements of (b)((+)) (iii) of this subsection ((do not apply)).

((iii)) (iv) The purveyor shall document, on a case-by-case basis, the reasons for ((not applying the requirements of)) granting an exception under (b)(i) of this subsection ((to a connection serving premises of the type listed in Table 9)) and include ((such)) the documentation in the cross-connection control program annual summary report required in subsection (8) of this section.

**TABLE 9**  
**SEVERE\* AND HIGH HEALTH CROSS-CONNECTION HAZARD**  
**PREMISES REQUIRING PREMISES ISOLATION BY AG OR RPBA**

- Agricultural (farms and dairies)
- Beverage bottling plants
- Car washes
- Chemical plants
- Commercial laundries and dry cleaners
- Premises where both reclaimed water and potable water are provided
- Film processing facilities
- Food processing plants
- Hospitals, medical centers, nursing homes, veterinary, medical and dental clinics, and blood plasma centers

- Premises with separate irrigation systems using the purveyor's water supply and with chemical addition<sup>+</sup>
- Laboratories
- Metal plating industries
- Mortuaries
- Petroleum processing or storage plants
- Piers and docks
- Radioactive material processing plants or nuclear reactors<sup>\*</sup>
- Survey access denied or restricted
- Wastewater lift stations and pumping stations
- Wastewater treatment plants<sup>\*</sup>
- Premises with an unapproved auxiliary water supply interconnected with the potable water supply

+ For example, parks, playgrounds, golf courses, cemeteries, estates, etc.

\* RPBA's for connections serving these premises are acceptable only when used in combination with an in-plant approved air gap; otherwise, the purveyor shall require an approved air gap at the service connection.

(c) Backflow protection for single-family residences.

(i) For single-family residential service connections, the purveyor shall comply with the premises isolation requirements of (b) of this subsection when applicable.

(ii) If the requirements of (b) of this subsection do not apply and the requirements specified in subsection (2)((+)) (g)(ii) of this section are met, the purveyor may rely on backflow protection provided at the point of hazard in accordance with WAC 51-56-0600 of the UPC for hazards such as, but not limited to:

- (A) Irrigation systems;
- (B) Swimming pools or spas;
- (C) Ponds; and
- (D) Boilers.

For example, the purveyor may accept an approved AVB on a residential irrigation system, if the AVB is properly installed ((in accordance with)) under the UPC.

(d) Backflow protection for fire protection systems.

(i) Backflow protection is not required for residential flow-through or combination fire protection systems constructed of potable water piping and materials.

(ii) For service connections with fire protection systems other than flow-through or combination systems, the purveyor shall ensure that backflow protection consistent with WAC 51-56-0600 of the UPC is installed. The UPC requires minimum protection as follows:

- (A) An RPBA or RPDA for fire protection systems with chemical addition or using unapproved auxiliary water supply; and
- (B) A DCVA or DCDA for all other fire protection systems.

((iii)) (iii) For ((new)) connections made on or after ((the effective date of these regulations)) April 9, 1999, the purveyor shall ensure that backflow protection is installed before water service is provided.

(iv) For existing fire protection systems:

(A) With chemical addition or using unapproved auxiliary supplies, the purveyor shall ensure that backflow protec-

tion is installed within ninety days of the purveyor notifying the consumer of the high health cross-connection hazard or in accordance with an alternate schedule acceptable to the purveyor.

(B) Without chemical addition, without on-site storage, and using only the purveyor's water (i.e., no unapproved auxiliary supplies on or available to the premises), the purveyor shall ensure that backflow protection is installed in accordance with a schedule acceptable to the purveyor or at an earlier date if required by the ~~((agency))~~ code official administering the ~~((Uniform))~~ State Building Code as ~~((adopted under chapter 19.27 RCW))~~ defined in chapter 51-04 WAC.

(C) When establishing backflow protection retrofitting schedules for fire protection systems that have the characteristics listed in (d)(iv)(B) of this subsection, the purveyor may consider factors such as, but not limited to, impacts of assembly installation on sprinkler performance, costs of retrofitting, and difficulty of assembly installation.

(e) Purveyors may require approved backflow preventers commensurate with the degree of hazard as determined by the purveyor to be installed for premises isolation for connections serving premises that have characteristics such as, but not limited to, the following:

(i) Complex plumbing arrangements or plumbing potentially subject to frequent changes that make it impracticable to assess whether cross-connection hazards exist;

(ii) A repeated history of cross-connections being established or reestablished; or

(iii) Cross-connection hazards are unavoidable or not correctable, such as, but not limited to, tall buildings.

(5) Approved backflow preventers.

(a) The purveyor shall ensure that all backflow prevention assemblies relied upon by the purveyor are models included on the current list of backflow prevention assemblies approved for use in Washington state. The current approved assemblies list is available from the department upon request.

(b) The purveyor may rely on testable backflow prevention assemblies that are not currently approved by the department, if the assemblies:

(i) Were included on the department and/or USC list of approved backflow prevention assemblies at the time of installation;

(ii) Have been properly maintained;

(iii) Are commensurate with the purveyor's assessed degree of hazard; and

(iv) Have been inspected and tested at least annually and have successfully passed the annual tests.

(c) The purveyor shall ensure that an unlisted backflow prevention assembly is replaced by an approved assembly commensurate with the degree of hazard, when the unlisted assembly:

(i) Does not meet the conditions specified in (b)(i) through (iv) of this subsection;

(ii) Is moved; or

(iii) Cannot be repaired using spare parts from the original manufacturer.

(d) The purveyor shall ensure that AVBs meet the definition of approved atmospheric vacuum breakers as described in WAC 246-290-010.

(6) Approved backflow preventer installation.

(a) The purveyor shall ensure that approved backflow preventers are installed in the orientation for which they are approved (if applicable).

(b) The purveyor shall ensure that approved backflow preventers are installed in a manner that:

(i) Facilitates their proper operation, maintenance, inspection, ~~((and/or))~~ in-line testing ~~((as applicable))~~, (as applicable) and repair using standard installation procedures acceptable to the department such as those in the USC Manual or PNWS-AWWA Manual;

(ii) Ensures that the assembly will not become submerged due to weather-related conditions such as flooding; and

(iii) Ensures compliance with all applicable safety regulations.

(c) The purveyor shall ensure that approved backflow assemblies for premises isolation are installed at a location adjacent to the meter or property line or an alternate location acceptable to the purveyor.

(d) When premises isolation assemblies are installed at an alternate location acceptable to the purveyor, the purveyor shall ensure that there are no connections between the point of delivery from the public water system and the approved backflow assembly, unless the installation of ~~((such a))~~ the connection meets the purveyor's cross-connection control requirements and is specifically approved by the purveyor.

(e) The purveyor shall ensure that approved backflow preventers are installed in accordance with the following time frames:

(i) For ~~((new))~~ connections made on or after ~~((the effective date of these regulations))~~ April 9, 1999, the following conditions shall be met before service is provided:

(A) The provisions of subsection (3)(d)(ii) of this section; and

(B) Satisfactory completion of ~~((a test by a BAT in accordance with))~~ the requirements of subsection (7) of this section.

(ii) For existing connections where the purveyor identifies a high health cross-connection hazard, the provisions of (3)(d)(ii) of this section shall be met:

(A) Within ninety days of the purveyor notifying the consumer of the high health cross-connection hazard; or

(B) In accordance with an alternate schedule acceptable to the purveyor.

(iii) For existing connections where the purveyor identifies a low ~~((health))~~ cross-connection hazard, the provisions of subsection (3)(d)(ii) of this section shall be met in accordance with a schedule acceptable to the purveyor.

(f) The purveyor shall ensure that bypass piping installed around any approved backflow preventer is equipped with an approved backflow preventer that:

(i) Affords at least the same level of protection as the approved backflow preventer that is being bypassed; and

(ii) Complies with all applicable requirements of this section.

(7) Approved backflow preventer inspection and testing.

(a) For backflow preventers that protect the public water system, the purveyor shall ensure that:

(i) A CCS inspects backflow preventer installations to ensure that protection is provided commensurate with the assessed degree of hazard;

(ii) Either a BAT or CCS inspects:

(A) Air gaps installed in lieu of approved backflow prevention assemblies for compliance with the approved air gap definition; and

(B) Backflow prevention assemblies for correct installation and approval status.

(iii) A BAT tests approved backflow prevention assemblies for proper operation.

(b) The purveyor shall ensure that inspections and/or tests of approved air gaps and approved backflow assemblies that protect the public water systems are conducted:

(i) ~~((At the time of installation;))~~ When any of the following occur:

(A) Upon installation, repair, reinstallation, or relocation of an assembly;

(B) Upon installation or replumbing of an air gap;

(C) After a backflow incident involving the assembly or air gap; and

(ii) ~~Annually ((after installation, or)) thereafter, unless the purveyor requires more ((frequently, if required by the purveyor)) frequent testing is for ((connections serving premises or systems that pose a high health cross-connection)) high hazard premises or for assemblies that repeatedly fail(;~~

~~(iii) After a backflow incident; and~~

~~(iv) After an assembly is repaired, reinstalled, or relocated or an air gap is replumbed).~~

(c) The purveyor shall ensure that inspections of AVBs installed on irrigation systems are conducted:

(i) At the time of installation;

(ii) After a backflow incident; and

(iii) After repair, reinstallation, or relocation.

(d) The purveyor shall ensure that approved backflow prevention assemblies are tested using procedures acceptable to the department, such as those specified in the most recently published edition of the USC Manual. When circumstances, such as, but not limited to, configuration or location of the assembly, preclude the use of USC test procedures, the purveyor may allow, on a case-by-case basis, the use of alternate (non-USC) test procedures acceptable to the department.

(e) The purveyor shall ensure that results of backflow prevention assembly inspections and tests are documented and reported in a manner acceptable to the purveyor.

(f) The purveyor shall ensure that an approved backflow prevention assembly or AVB, whenever found to be improperly installed, defective, not commensurate with the degree of hazard, or failing a test (if applicable) is properly reinstalled, repaired, overhauled, or replaced.

(g) The purveyor shall ensure that an approved air gap, whenever found to be altered or improperly installed, is properly replumbed or, if commensurate with the degree of hazard, is replaced by an approved RPBA.

(8) Recordkeeping and reporting.

(a) Purveyors shall keep cross-connection control records for the following time frames:

(i) Records pertaining to the master list of service connections and/or consumer's premises required in subsection (3)(j)(i) of this section shall be kept as long as the premises

pose a cross-connection hazard to the purveyor's distribution system;

(ii) Records regarding inventory information required in subsection (3)(j)(ii) of this section shall be kept for five years or for the life of the approved backflow preventer whichever is shorter; and

(iii) Records regarding backflow incidents and annual summary reports required in subsection (3)(j)(iii) of this section shall be kept for five years.

(b) Purveyors may maintain cross-connection control records in original form or transfer data to tabular summaries.

(c) Purveyors may maintain records or data in any media, such as paper, film, or electronic format.

(d) The purveyor shall complete the cross-connection control program summary report annually. Report forms and guidance on completing the report are available from the department.

(e) The purveyor shall make all records and reports required in subsection (3)(j) of this section available to the department or its representative upon request.

(f) The purveyor shall notify the department, ~~((local administrative))~~ having jurisdiction, and local health jurisdiction as soon as possible, but no later than the end of the next business day, when a backflow incident is known by the purveyor to have:

(i) Contaminated the public water system; or

(ii) Occurred within the premises of a consumer served by the purveyor.

(g) The purveyor shall:

(i) Document details of backflow incidents contaminating the public water system on a backflow incident report form ((acceptable to)) available from the department ((such as the backflow incident report form included in the most recent edition of the PNWS AWWA Manual)); and

(ii) Include all backflow incident report(s) in the annual cross-connection program summary report referenced in (d) of this subsection, unless otherwise requested by the department.

**AMENDATORY SECTION** (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-601 Purpose of surface water treatment.** (1) Part 6 of chapter 246-290 WAC establishes filtration and disinfection as treatment technique requirements for water systems using surface or GWI sources. The Part 6 treatment technique requirements are established in lieu of maximum contaminant levels (MCLs) for the following contaminants:

(a) *Giardia lamblia*;

(b) Viruses;

(c) Heterotrophic plate count bacteria;

(d) *Legionella*;

(e) *Cryptosporidium* ~~((for systems serving at least ten thousand people and beginning January 14, 2005, for systems serving less than ten thousand people))~~; and

(f) Turbidity.

(2) For water systems using unfiltered surface sources, in whole or part, and that have been required to install, but have yet to complete the installation and operation of, filtration

facilities, the turbidity levels at entry points to distribution and sampling/analytical requirements shall be ~~((in accordance with))~~ under 40 CFR 141.13 and 40 CFR 141.22, respectively.

AMENDATORY SECTION (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-630 General requirements.** (1) The purveyor shall ensure that treatment is provided for surface and GWI sources consistent with the treatment technique requirements specified in Part 6 of chapter 246-290 WAC.

(2) The purveyor shall install and properly operate water treatment processes to ensure at least:

(a) 99.9 percent (3 log) removal and/or inactivation of *Giardia lamblia* cysts;

(b) 99.99 percent (4 log) removal and/or inactivation of viruses; and

(c) 99 percent (2 log) removal of *Cryptosporidium* oocysts if required to filter.

(3) The purveyor shall ensure that the requirements of subsection (2) of this section are met between a point where the source water is not subject to contamination by untreated surface water and a point at or before the first consumer.

(4) The department may require higher levels of removal and/or inactivation of *Giardia lamblia* cysts, *Cryptosporidium* oocysts, and viruses than specified in subsection (2) of this section if deemed necessary to protect the health of consumers served by the system.

(5) The purveyor shall ensure that personnel operating a system subject to Part 6 of chapter 246-290 WAC meet the requirements under chapter 70.119 RCW and chapter 246-292 WAC.

(6) The purveyor of a **Group A community** system serving water from a surface or GWI source to the public before January 1, 1991, shall comply with applicable minimum treatment requirements. The purveyor shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662 respectively;

(b) The criteria to remain unfiltered under WAC 246-290-690 and the disinfection requirements under WAC 246-290-692; or

(c) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(7) The purveyor of a **Group A noncommunity** system serving water from a surface or GWI source, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(8) The purveyor of a **Group A** system first serving water from a surface or GWI source to the public after December 31, 1990, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(9) The purveyor of a system required to install filtration may choose to provide a limited alternative to filtration or abandon the surface or GWI source as a permanent or seasonal source and develop an alternate, department-approved source. Purveyors that develop alternate ground water sources or purchase water from a department-approved public water system using a ground water source shall no longer be subject to Part 6 of chapter 246-290 WAC, once the alternate source is approved by the department and is on line.

(10) A purveyor that chooses to provide a limited alternative to filtration shall submit an application to the department that contains the information necessary to determine whether the source can meet the criteria.

(11) If a limited alternative to filtration is provided, then the purveyor shall install and properly operate treatment processes to ensure greater removal and/or inactivation efficiencies of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern (including *Cryptosporidium* oocysts) than would be achieved by the combination of filtration and chlorine disinfection.

(12) Systems that were required to develop a disinfection profile under 40 CFR 141.172 shall provide that profile and a calculated disinfection benchmark, as described in 40 CFR 141.172 (c)(2) and (3), along with other project information specified in WAC 246-290-110, when proposing any change to the disinfection treatment system. The proposal for change shall include an analysis of how the proposed change will affect the current level of disinfection. The profile must also be available for inspection during routine sanitary surveys conducted under WAC 246-290-416.

(13) Community and nontransient noncommunity systems serving less than ten thousand persons must meet the disinfection profiling and benchmarking provisions required ~~((in accordance with))~~ under 40 CFR 141.530 through 141.544.

(14) Systems required to develop a disinfection profile under 40 CFR 141.530 shall provide that profile and a calculated disinfection benchmark, as described in 40 CFR 141.543 along with other project information specified in WAC 246-290-110, when proposing any change to the disinfection treatment system. The proposal for change shall include an analysis of how the proposed change will affect the current level of disinfection. The profile must also be available for inspection during routine sanitary surveys conducted ~~((in accordance with))~~ under WAC 246-290-416.

(15) A system using conventional, direct, or in-line filtration that must arrange for the conduct of a ~~((comprehensive performance evaluation (CPE)))~~, ~~((in accordance with))~~ under 40 CFR 141.175 (b)(4) or 40 CFR 141.563, may be required to arrange for ~~((comprehensive technical assistance (CTA)))~~. The department will determine the need for CTA on a case-by-case basis.

(16) Water systems subject to the requirements of Part 6 of this chapter must also comply with the enhanced treatment requirements for *Cryptosporidium* under 40 CFR Subpart W. The requirements are in addition to the requirements of Part 6 of this chapter and include:

(a) General requirements under 40 CFR 141.700;

(b) Source monitoring requirements under 40 CFR 141.701-707;

(c) Disinfection profiling and benchmarking requirements under 40 CFR 141.708-709;

(d) Treatment technique requirements under 40 CFR 141.710-714;

(e) Requirements for microbial toolbox components under 40 CFR 141.715-720; and

(f) Reporting and recordkeeping requirements under 40 CFR 141.721-722.

(17) Water systems using UV reactors to obtain treatment credit for *Cryptosporidium* removal must:

(a) Validate the reactors using the validation testing procedures specified under 40 CFR 141.720 (d)(2); or

(b) Validate the reactor under Austrian ONORM Standards or German DVGW Standards.

**AMENDATORY SECTION** (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-632 Treatment technique violations.**

(1) A treatment technique violation shall be considered a violation of a primary drinking water standard and in the case of an unfiltered system, may result in the purveyor of an unfiltered system being required to install filtration.

(2) A treatment technique violation occurs when a system using a surface or GWI source is identified by the department as the source of a waterborne disease outbreak or any of the following occur as applicable:

(a) The purveyor providing filtration delivers unfiltered water or fails to meet one or more of the following requirements:

(i) Filtration treatment in accordance with WAC 246-290-660; or

(ii) Disinfection treatment in accordance with WAC 246-290-662.

(b) The purveyor required to install filtration:

(i) Fails to meet the interim disinfection requirements ~~((in accordance with))~~ under WAC 246-290-672 or as otherwise directed by the department; or

(ii) Fails to install filtration or develop an alternate source by the applicable time lines specified in WAC 246-290-670.

(c) The purveyor of an unfiltered surface water, or GWI source, meeting the criteria to remain unfiltered:

(i) Delivers water with a turbidity level exceeding 5.0 NTU measured at a point immediately prior to the point of primary disinfection; or

(ii) Fails to meet one or more of the disinfection requirements ~~((in accordance with))~~ under WAC 246-290-692 after the dates specified in WAC 246-290-686.

(d) The purveyor of an unfiltered source meeting the criteria to provide a limited alternative to filtration:

(i) Delivers water with a turbidity level exceeding 5.0 NTU measured at a point immediately prior to the point of primary disinfection; or

(ii) Fails to meet one or more of the disinfection requirements ~~((in accordance with))~~ under WAC 246-290-692.

(e) A purveyor supplies water from an unfiltered source that has not been previously approved by the department.

(f) A purveyor of a department approved unfiltered source that fails to meet the on-going criteria to remain unfiltered:

(i) Delivers water with a turbidity level exceeding 5.0 NTU measured at a point immediately prior to the point of primary disinfection; or

(ii) Fails to meet one or more of the disinfection requirements ~~((in accordance with))~~ under WAC 246-290-692.

(g) A purveyor of a department approved unfiltered source that has failed to meet the criteria to provide a limited alternative to filtration:

(i) Delivers water with a turbidity level exceeding 5.0 NTU measured at a point immediately prior to the point of primary disinfection; or

(ii) Fails to meet one or more of the disinfection requirements ~~((in accordance with))~~ under WAC 246-290-692.

~~(h) A purveyor fails to meet the enhanced *Cryptosporidium* treatment requirements under 40 CFR 141.711 or 141.712.~~

**AMENDATORY SECTION** (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-638 Analytical requirements.** (1) The purveyor shall ensure that only qualified persons conduct measurements for pH, temperature, turbidity, and residual disinfectant concentrations. In this section, qualified shall mean:

(a) A person certified under chapter 246-292 WAC;

(b) An analyst, with experience conducting these measurements, from the state public health laboratory or another laboratory certified by the department; or

(c) A state or local health agency professional experienced in conducting these measurements.

(2) The purveyor shall ensure that measurements for temperature, turbidity, pH, and residual disinfectant concentration are made in accordance with "standard methods," or other EPA approved methods.

(3) The purveyor shall ensure that samples for coliform and HPC analysis are:

(a) Collected and transported in accordance with department-approved methods; and

(b) Submitted to the state public health laboratory or another laboratory certified by the department to conduct the analyses.

(4) Turbidity monitoring.

(a) The purveyor shall equip the system's water treatment facility laboratory with a:

(i) Bench model turbidimeter; and

(ii) Continuous turbidimeter and recorder if required under WAC 246-290-664 or 246-290-694.

(b) The purveyor shall ensure that bench model and continuous turbidimeters are:

(i) Designed to meet the criteria in "standard methods," EPA Method 180.1, or Great Lakes Instruments Method 2; and

(ii) Properly operated, calibrated, and maintained at all times in accordance with the manufacturer's recommendations.

(c) The purveyor shall validate continuous turbidity measurements for accuracy as follows:

(i) Calibrate turbidity equipment based upon a primary standard in the expected range of measurements; and

(ii) Verify continuous turbidimeter performance on a weekly basis, not on consecutive days, with grab sample measurements made using a properly calibrated bench model turbidimeter.

(d) When continuous turbidity monitoring equipment fails, the purveyor shall measure turbidity on grab samples collected at least every four hours from the combined filter effluent and individual filters while the system serves water to the public and the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment on-line within five working days of failure.

(5) Purveyors monitoring for *Cryptosporidium* or *E. coli* as required under 40 CFR 141.701 shall collect samples and have them analyzed under 40 CFR 141.704 and 141.705.

AMENDATORY SECTION (Amending Order 352B, filed 3/25/93, effective 4/25/93)

**WAC 246-290-639 SWTR records.** (1) Purveyors using surface or GWI sources shall maintain accurate and complete operations records.

(2) Operations records shall include, but not be limited to, the following as applicable:

(a) Results of all monitoring conducted under Part 6 of chapter 246-290 WAC;

(b) Quantity of water produced, plant flow rates, and hours of operation;

(c) Types and quantities of chemicals used;

(d) Dates and information pertaining to filter and/or disinfection system maintenance;

(e) Dates and results of filter and/or disinfection system inspections including records of filtration and backwash rates; ~~(and)~~

(f) Dates and descriptions of major equipment and/or treatment process failures and corrective actions taken; and

(g) The information and data specified under 40 CFR 141.721 related to enhanced treatment for *Cryptosporidium*.

(3) Operations records not reported to the department under WAC 246-290-666 or 246-290-696 shall be maintained at the purveyor's treatment facility.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-654 Treatment criteria for filtered systems.** (1) The purveyor shall operate filters so that maximum flow rates do not exceed those specified in Table 10. The purveyor may operate filters at higher flow rates, if the purveyor demonstrates to the department's satisfaction that filtration at the higher rate consistently achieves at least 99 percent (2 log) removal of *Giardia lamblia* cysts and 99 percent (2 log) removal of *Cryptosporidium* oocysts and meets the turbidity performance requirements of Table 11.

**Table 10**  
**FILTRATION OPERATION CRITERIA**

FILTRATION TECHNOLOGY/MEDIA	MAXIMUM FILTRATION RATE (gpm/ft <sup>2</sup> )
Conventional, Direct and In-Line	
Gravity Filters with Single Media	3
Gravity Filters with Deep Bed, Dual or Mixed Media	6
Pressure Filters with Single Media	2
Pressure Filters with Deep Bed, Dual or Mixed Media	3
Slow Sand	0.1
Diatomaceous Earth	1.0

(2) The purveyor using conventional, direct or in-line filtration shall ensure that effective coagulation is in use at all times the water treatment facility produces water served to the public.

(3) The purveyor using conventional, direct, or in-line filtration shall demonstrate treatment effectiveness for *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal by one of the following methods:

(a) Turbidity reduction method.

(i) The purveyor shall make source and filtered water turbidity measurements in accordance with WAC 246-290-664 (2) and (3) respectively.

(ii) The purveyor shall achieve:

(A) The turbidity performance requirements specified in WAC 246-290-660(1) and at least an eighty percent reduction in source turbidity based on an average of the daily turbidity reductions measured in a calendar month; or

(B) An average daily filtered water turbidity less than or equal to 0.1 NTU.

(b) Particle counting method. The purveyor shall:

(i) Use a particle counting protocol acceptable to the department; and

(ii) Demonstrate at a frequency acceptable to the department at least the following log reduction of particles in the size range of five to fifteen microns (*Giardia lamblia* cyst-sized particles) and three to five microns (*Cryptosporidium* oocyst-sized particles), as applicable:

(A) 2.5 log reduction in *Giardia lamblia* cyst-sized particles and a 2 log reduction in *Cryptosporidium* particles for systems using conventional filtration; or

(B) 2.0 log reduction for systems using direct or in-line filtration.

(c) Microscopic particulate analysis method. The purveyor shall:

(i) Use a protocol acceptable to the department; and

(ii) Demonstrate at a frequency acceptable to the department at least the following log reduction of *Giardia lamblia* cysts and *Cryptosporidium* oocysts or *Giardia lamblia* cyst and *Cryptosporidium* oocyst surrogate indicators as applicable:

(A) 2.5 log reduction in *Giardia lamblia* cysts or surrogates and a 2 log reduction in *Cryptosporidium* oocyst or surrogates for systems using conventional filtration; and

(B) 2.0 log reduction for systems using direct or in-line filtration.

(d) Other methods acceptable to the department.

(4) The purveyor shall ensure continuous disinfection of all water delivered to the public and shall:

(a) Maintain an adequate supply of disinfection chemicals and keep back-up system components and spare parts on hand;

(b) Develop, maintain, and post at the water treatment facility a plan detailing:

(i) How water delivered to the public will be continuously and adequately disinfected; and

(ii) The elements of an emergency notification plan to be implemented whenever the residual disinfectant concentration at entry to distribution falls below 0.2 mg/L for more than one hour.

(c) Implement the plan during an emergency affecting disinfection.

(5) Operations program.

(a) For each water treatment facility treating a surface or GWI source, the purveyor shall develop an operations program and make it available to the department for review upon request.

(b) The program shall be submitted to the department as an addendum to the purveyor's water system plan (WAC 246-290-100) or small water system management program (WAC 246-290-105).

(c) The program shall detail how the purveyor will produce optimal filtered water quality at all times the water treatment facility produces water to be served to the public.

(d) The purveyor shall operate the water treatment facility in accordance with the operations program.

(e) The operations program shall include, but not be limited to, a description of:

(i) For conventional, direct or in-line filtration, procedures used to determine and maintain optimized coagulation as demonstrated by meeting the requirements of WAC 246-290-654(3);

(ii) Procedures used to determine chemical dose rates;

(iii) How and when each unit process is operated;

(iv) Unit process equipment maintenance program;

(v) Treatment plant performance monitoring program;

(vi) Laboratory procedures;

(vii) Records;

(viii) Reliability features; and

(ix) Response plans for water treatment facility emergencies, including disinfection failure and watershed emergencies.

(f) The purveyor shall ensure the operations program is:

(i) Readily available at the water treatment facility for use by operators and for department inspection;

(ii) Consistent with department guidelines for operations procedures such as those described in department guidance on surface water treatment and water system planning; and

(iii) Updated as needed to reflect current water treatment facility operations.

(6) Pressure filters. Purveyors using pressure filters shall:

(a) Inspect and evaluate the filters, at least every six months, for conditions that would reduce their effectiveness in removing *Giardia lamblia* cysts;

(b) Maintain, and make available for department review, a written record of pressure filter inspections; and

(c) Be prepared to conduct filter inspections in the presence of a department representative, if requested.

**AMENDATORY SECTION** (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-660 Filtration.** (1) Turbidity performance requirements.

(a) The purveyor shall ensure that the turbidity level of representative filtered water samples:

(i) Complies with the performance standards in Table 11 ~~((A) until January 14, 2005, and Table 11(B) beginning January 14, 2005; and)~~;

(ii) Never exceeds 5.0 NTU for any system using slow sand, diatomaceous earth;

~~(iii) ((Never exceeds 5.0 NTU for any system serving less than ten thousand people and using conventional, direct, or in-line filtration until January 14, 2005, and never exceeds 1.0 NTU beginning January 14, 2005;~~

~~(iv))~~ Never exceeds 1.0 NTU for any system ~~((serving at least ten thousand people and))~~ using conventional, direct, or in-line filtration; and

~~((v))~~ (iv) Never exceeds the maximum allowable turbidity determined by the department on a case-by-case basis for any system using an ~~((alternate))~~ alternative filtration technology approved under WAC 246-290-676 (2)(b).

~~((Table 11(A))~~

~~**TURBIDITY PERFORMANCE REQUIREMENTS (UNTIL JANUARY 14, 2005)**~~

Filtration Technology	Filtered water turbidity (in NTUs) shall be less than or equal to this value in at least 95% of the measurements made each calendar month	
	Systems serving < 10,000 people	Systems serving > 10,000 people
Conventional, Direct and In-line	0.50	0.30
Slow Sand	1.0	1.0
Diatomaceous Earth	1.0	1.0
Alternate Technology	As determined by the department through case-by-case approval of technology, in accordance with WAC 246-290-676 (2)(b).)	

~~Table 11((B))~~

~~**TURBIDITY PERFORMANCE STANDARDS ((BEGINNING JANUARY 14, 2005))**~~

Filtration Technology	Filtered water turbidity (in NTUs) shall be less than or equal to this value in at least 95% of the measurements made each calendar month
Conventional, Direct and In-line	0.30
Slow Sand	1.0

**Table 11((B))  
TURBIDITY PERFORMANCE STANDARDS ((BEGINNING JANU-  
ARY 14, 2005))**

Filtration Technology	Filtered water turbidity (in NTUs) shall be less than or equal to this value in at least 95% of the measurements made each calendar month
Conventional, Direct and In-line	0.30
Diatomaceous Earth	1.0
((Alternate)) <u>Alternative</u> Technology	As determined by the department through case-by-case approval of technology, ((in accordance with)) <u>under</u> WAC 246-290-676 (2)(b).

(b) The department may allow the turbidity of filtered water from a system using slow sand filtration to exceed 1.0 NTU, but never 5.0 NTU, if the system demonstrates to the department's satisfaction that the higher turbidity level will not endanger the health of consumers served by the system.

Filtration Technology	Percent Removal Credit (log)					
	<i>Giardia</i>		Virus		<i>Cryptosporidium</i>	
	Percent	log	Percent	log	Percent	log
Conventional	99.7	2.5	99	2.0	99	2.0
Direct and in-line	99	2.0	90	1.0	99	2.0

(ii) A system using conventional, direct, or in-line filtration shall be considered to provide effective treatment, if the purveyor demonstrates to the satisfaction of the department that the system meets the:

(A) Turbidity performance requirements under subsection (1) of this section; and

(B) Operations requirements of WAC 246-290-654.

(iii) ~~((The department may grant a higher level of *Giardia lamblia*, *Cryptosporidium*, and virus removal credit than listed under (b)(i) of this subsection, if the purveyor demonstrates to the department's satisfaction that the higher level can be consistently achieved.~~

~~(iv) As a condition of maintaining the maximum removal credit, purveyors may be required to periodically monitor one or more parameters not routinely monitored under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.~~

~~(v)) The department shall not grant removal credit to a system using conventional, direct, or in-line filtration that:~~

~~(A) Fails to meet the minimum turbidity performance requirements under subsection (1) of this section; or~~

~~(B) Fails to meet the operating requirements under WAC 246-290-654.~~

(c) Slow sand filtration.

The department may grant a system using slow sand filtration 99 percent (2 log) *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal credit and 99 percent (2 log) virus removal credit, if the system meets the department design requirements under WAC 246-290-676 and meets the minimum turbidity performance requirements in subsection (1) of this section.

(d) Diatomaceous earth filtration.

As a condition of being allowed to produce filtered water with a turbidity exceeding 1.0 NTU, the purveyor may be required to monitor one or more parameters in addition to the parameters specified under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.

(2) *Giardia lamblia*, *Cryptosporidium*, and virus removal credit.

(a) The department shall notify the purveyor of the removal credit granted for the system's filtration process. The department shall specify removal credit for:

(i) Existing filtration facilities based on periodic evaluations of performance and operation; and

(ii) New or modified filtration facilities based on results of pilot plant studies or full scale operation.

(b) Conventional, direct, and in-line filtration.

(i) The removal credit the department may grant to a system using conventional, direct, or in-line filtration and demonstrating effective treatment is as follows:

The department may grant a system using diatomaceous earth filtration 99 percent (2 log) *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal credit and 90 percent (1 log) virus removal credit, if the system meets the department design requirements under WAC 246-290-676 and meets the minimum turbidity performance requirements in subsection (1) of this section.

(e) ~~((Alternate)) Alternative filtration technology.~~

The department shall grant, on a case-by-case basis, *Giardia lamblia* cyst, *Cryptosporidium* oocyst, and virus removal credit for systems using ~~((alternate)) alternative filtration technology based on results of product testing acceptable to the department.~~

(f) The purveyor granted no *Giardia lamblia* cyst removal credit and no *Cryptosporidium* oocyst removal credit shall:

(i) Provide treatment ~~((in accordance with)) under WAC 246-290-662 (2)(d); and~~

(ii) Within ninety days of department notification regarding removal credit, submit an action plan to the department for review and approval. The plan shall:

(A) Detail how the purveyor plans to comply with the turbidity performance requirements in subsection (1) of this section and operating requirements of WAC 246-290-654; and

(B) Identify the proposed schedule for implementation.

(iii) Be considered in violation of the treatment technique specified in WAC 246-290-632 (2)(a)(i) and shall take follow-up action specified in WAC 246-290-634.

(g) Higher level removal credit.

(i) The department may grant a higher level of *Giardia lamblia*, *Cryptosporidium*, and virus removal credit than listed under (b) through (e) of this subsection, if the purveyor



demonstrates to the department's satisfaction that the higher level can be consistently achieved.

(ii) As a condition of maintaining the maximum removal credit, purveyors may be required to periodically monitor one or more parameters not routinely monitored under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.

(3) Disinfection by-product precursor removal requirements.

(a) Conventional systems using sedimentation shall meet the treatment technique requirements for control of disinfection by-product precursors specified in 40 CFR 141.135.

(i) Applicability of this requirement shall be determined in accordance with 40 CFR 141.135(a).

(ii) Enhanced coagulation and enhanced softening shall be provided in accordance with 40 CFR 141.135(b), if applicable.

(iii) Compliance with the treatment technique requirements for control of disinfection by-product precursors shall be determined in accordance with 40 CFR 141.135(c).

(b) For the purposes of compliance with (a) of this subsection, sedimentation shall be considered applicable when:

(i) Surface overflow rates and other design parameters are in conformance with traditionally accepted industry standards and textbook values, such as those prescribed in nationally accepted standards, including the most recent version of the *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers*; and

(ii) The system has received pathogen removal credit for the sedimentation basin.

(4) Filter backwash recycling requirements.

(a) By no later than December 8, 2003, purveyors using conventional, direct, or in-line filtration must **report** to the department, in writing, whether they recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within the treatment plant.

(i) Purveyors that **do** recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must also report the following information:

(A) A plant schematic showing the origin of all flows that are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance (i.e., pipe, open channel) used to transport them, and the location where they are reintroduced back into the treatment plant.

(B) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and the approved operating capacity for the plant.

(b) By no later than June 8, 2004, purveyors using conventional, direct, or in-line filtration that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within the treatment plant shall:

(i) Return the recycled flow prior to, or concurrent with the location where primary coagulant is introduced into the flow stream.

(ii) By no later than June 8, 2006, complete any capital improvements (physical modifications requiring engineering

planning, design, and construction) necessary to meet the requirements of (b)(i) of this subsection.

(iii) On a case-by-case basis, the department may approve an alternate location for the return of recycle flows.

AMENDATORY SECTION (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-664 Monitoring for filtered systems.**

(1) Source coliform monitoring.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are:

(i) Collected before the first point of disinfectant application and before coagulant chemical addition; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) At a minimum, the purveyor shall ensure source samples are collected for fecal coliform analysis at a frequency equal to ten percent of the number of routine coliform samples collected within the distribution system each month under WAC 246-290-300, or once per calendar month, whichever is greater up to a maximum of one sample per day.

(c) With written approval from the department, purveyors of filtered water systems serving less than ten thousand people may collect twenty-six consecutive monthly fecal coliform samples instead of collecting *E. coli* samples every two weeks for twelve months as specified in 40 CFR 141.701(a)(3)(i). The fecal coliform levels that will trigger *Cryptosporidium* monitoring will be the same as the *E. coli* levels specified in 40 CFR 141.701(a)(4)(i), (ii), or (iv).

(2) Source turbidity monitoring.

(a) The purveyor using conventional, direct, or in-line filtration shall measure source turbidity at least once per day on a representative sample collected before disinfection and coagulant addition.

(b) Grab sampling or continuous turbidity monitoring and recording may be used to meet the requirement specified in (a) of this subsection.

(c) Purveyors using continuous turbidity monitoring shall record continuous turbidity measurements at equal intervals, at least every four hours, in accordance with a department-approved sampling schedule.

(d) Purveyors using an approved (~~alternate~~) alternative filtration technology may be required to monitor source water turbidity at least once per day on a representative sample as determined by the department.

(3) Filtered water turbidity monitoring.

(a) The purveyor using direct, conventional, or in-line filtration shall:

(i) Continuously monitor turbidity on representative samples from each individual filter unit and from the system's combined filter effluent, prior to clearwell storage;

(ii) For systems serving at least ten thousand people, record continuous turbidity measurements from each individual filter unit at equal intervals of at least every fifteen minutes, and for all systems, from the combined filter effluent at equal intervals of at least every four hours, in accordance with a department-approved sampling schedule;

(iii) Beginning January 14, 2005, systems serving less than ten thousand people shall record continuous turbidity

measurements from each individual filter unit at equal intervals of at least every fifteen minutes;

(iv) Systems serving less than ten thousand people and consisting of two or fewer filters may record continuous turbidity measurements from the combined filter effluent at equal intervals of at least fifteen minutes in lieu of recording individual filter turbidity measurements; and

(v) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(b) The purveyor using slow sand or diatomaceous earth filtration shall:

(i) Continuously monitor turbidity on representative samples from each individual filter unit and from the system's combined filter effluent, prior to clearwell storage;

(ii) Record continuous turbidity measurements from the combined filter effluent at equal intervals of at least every four hours in accordance with a department-approved sampling schedule; and

(iii) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(c) Purveyors using an (~~alternate~~) alternative filtration technology approved under WAC 246-290-676 shall provide monitoring in accordance with the technology-specific approval conditions determined by the department.

(d) Purveyors using slow sand filtration or an (~~alternate~~) alternative filtration technology may reduce filtered water turbidity monitoring to one grab sample per day with (~~departmental~~) department approval. Reduced turbidity monitoring shall be allowed only where the purveyor demonstrates to the department's satisfaction that a reduction in monitoring will not endanger the health of consumers served by the water system.

(4) Monitoring the level of inactivation and removal.

(a) Each day the system is in operation, the purveyor shall determine the total level of inactivation and removal of *Giardia lamblia* cysts, viruses, and *Cryptosporidium* oocysts achieved.

(b) The purveyor shall determine the total level of inactivation and removal based on:

(i) *Giardia lamblia* cyst, *Cryptosporidium* oocyst, and virus removal credit granted by the department for filtration; and

(ii) Level of inactivation of *Giardia lamblia* cysts and viruses achieved through disinfection.

(c) At least once per day, purveyors shall monitor the following to determine the level of inactivation achieved through disinfection:

(i) Temperature of the disinfected water at each residual disinfectant concentration sampling point used for CT calculations; and

(ii) If using chlorine, pH of the disinfected water at each chlorine residual disinfectant concentration sampling point used for CT calculations.

(d) Each day during peak hourly flow (based on historical information), the purveyor shall:

(i) Determine disinfectant contact time, T, to the point at which C is measured; and

(ii) Measure the residual disinfectant concentration, C, of the water at the point for which T is calculated. The C

measurement point shall be located before or at the first consumer.

(e) The department may reduce CT monitoring requirements for purveyors that demonstrate to the department's satisfaction that the required levels of inactivation are consistently exceeded. Reduced CT monitoring shall only be allowed where the purveyor demonstrates to the department's satisfaction that a reduction in monitoring will not endanger the health of consumers.

(5) Monitoring the residual disinfectant concentration entering the distribution system.

(a) Systems serving more than thirty-three hundred people per month.

(i) The purveyor shall continuously monitor and record the residual disinfectant concentration of water entering the distribution system and report the lowest value each day.

(ii) If the continuous monitoring equipment fails, the purveyor shall measure the residual disinfectant concentration on grab samples collected at least every four hours at the entry to the distribution system while the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment back on-line within five working days following failure.

(b) Systems serving thirty-three hundred or less people per month.

(i) The purveyor shall collect grab samples or use continuous monitoring and recording to measure the residual disinfectant concentration entering the distribution system.

(ii) Purveyors of **community** systems choosing to take grab samples shall collect:

(A) Samples at the following minimum frequencies:

<u>Population Served</u>	<u>Number/day</u>
25 - 500	1
501 - 1,000	2
1,001 - 2,500	3
2,501 - 3,300	4

(B) At least one of the grab samples at peak hourly flow; and

(C) The remaining samples evenly spaced over the time the system is disinfecting water that will be delivered to the public.

(iii) Purveyors of **noncommunity** systems choosing to take grab samples shall collect samples for disinfectant residual concentration entering the distribution system as directed by the department.

(iv) When grab samples are collected and the residual disinfectant concentration at the entry to distribution falls below 0.2 mg/L, purveyors shall collect a grab sample every four hours until the residual disinfectant concentration is 0.2 mg/L or more.

(6) Monitoring residual disinfectant concentrations within the distribution system.

(a) The purveyor shall measure the residual disinfectant concentration at representative points within the distribution system on a daily basis or as otherwise approved by the department.

(b) At a minimum, the purveyor shall measure the residual disinfectant concentration within the distribution system

at the same time and location that a routine or repeat coliform sample is collected (~~(in accordance with)~~) under WAC 246-290-300(3) or 246-290-320(2).

(c) The purveyor may measure HPC within the distribution system in lieu of measuring the residual disinfectant concentration (~~(in accordance with)~~) under this subsection.

**AMENDATORY SECTION** (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-676 Filtration technology and design criteria.** (1) General.

(a) The purveyor proposing to construct new water treatment facilities or to make additions to existing water treatment facilities for surface and GWI sources shall ensure that the facilities comply with the treatment, design, and reliability requirements of Part 6 of chapter 246-290 WAC.

(b) The purveyor shall submit an engineering report to the department describing how the treatment facilities will be designed to comply with the requirements specified in Subparts A, B, and C of Part 6 of chapter 246-290 WAC.

(2) Filtration technology.

(a) The purveyor shall select a filtration technology acceptable to the department using criteria such as those outlined in department guidance on surface water treatment. The following filtration technologies are considered acceptable:

- (i) Conventional;
- (ii) Direct;
- (iii) Diatomaceous earth; and
- (iv) Slow sand.

(b) In addition to the technologies specified in subsection ~~((H))~~ ~~(2)(a)~~ of this section, ~~((alternate))~~ alternative filtration technologies may be acceptable, if the purveyor demonstrates to the department's satisfaction all of the following:

(i) Through acceptable third party testing, that system components do not leach or otherwise add substances to the finished water that would violate drinking water standards, or otherwise pose a threat to public health;

(ii) The technology's effectiveness in achieving at least 99 percent (2 log) removal of *Giardia lamblia* cysts or cyst surrogate particles, and at least 99 percent (2 log) removal of *Cryptosporidium* oocysts or oocyst surrogate particles. The purveyor shall further demonstrate the technology's removal capability through research conducted:

(A) By a party acceptable to the department; and

(B) In accordance with protocol and standards acceptable to the department.

(iii) Through on-site pilot plant studies or other means, that the filtration technology:

(A) In combination with disinfection treatment consistently achieves 99.9 percent (3 log) removal and inactivation of *Giardia lamblia* cysts and 99.99 percent (4 log) removal and inactivation of viruses; and

(B) Meets the applicable turbidity performance requirements as determined by the department for the specific treatment process being considered, but in no case to exceed 1.0 NTU for the finished water.

(3) Pilot studies.

(a) The purveyor shall ensure pilot studies are conducted for all proposed filtration facilities, except where waived based on engineering justification acceptable to the department.

(b) The purveyor shall obtain department approval for the pilot study plan before the pilot filter is constructed and before the pilot study is undertaken.

(c) The pilot study plan shall identify at a minimum:

(i) Pilot filter design;

(ii) Water quality and operational parameters to be monitored;

(iii) Type of data to be collected, frequency of data collection, and length of pilot study; and

(iv) Pilot plant operator qualifications.

(d) The purveyor shall ensure that the pilot study is:

(i) Conducted to simulate proposed full-scale design conditions;

(ii) Conducted over a time period that will demonstrate the effectiveness and reliability of the proposed treatment system during changes in seasonal and climatic conditions; and

(iii) Designed and operated in accordance with good engineering practices and that ANSI/NSF standards 60 and 61 are considered.

(e) When the pilot study is complete, the purveyor shall submit a project report to the department for approval (~~(in accordance with)~~) under WAC 246-290-110.

(4) Design criteria.

(a) The purveyor shall ensure that water treatment facilities for surface and GWI sources are designed and constructed in accordance with good engineering practices documented in references such as those identified in WAC 246-290-200.

(b) Filtration facilities.

(i) The purveyor shall ensure that all new filtration facilities and improvements to any existing filtration facilities (excluding disinfection) are designed to achieve at least 99 percent (2 log) removal of *Giardia lamblia* cysts, and 99 percent (2 log) removal of *Cryptosporidium* oocysts; and

(ii) The purveyor shall ensure that all new filtration facilities contain provisions for filtering to waste with appropriate measures for backflow prevention.

(c) The purveyor shall ensure that disinfection systems for new filtration facilities or improvements to existing disinfection facilities are designed to meet the requirements of WAC 246-290-662.

**AMENDATORY SECTION** (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-690 Criteria to remain unfiltered.** (1)

For a system not using the "limited alternative to filtration" option to remain unfiltered, the purveyor using a surface water or GWI source shall meet the source water quality and site-specific conditions under this section, as demonstrated through monitoring conducted in accordance with WAC 246-290-694.

(2) Source water quality conditions necessary to remain unfiltered.

(a) Coliform limits.

(i) The purveyor shall ensure that representative source water samples taken before the first point of disinfection have a fecal coliform density less than or equal to 20/100 ml in ninety percent or more of all samples taken during the six previous calendar months the system served water to the public. Samples collected on days when source water turbidity exceeds 1.0 NTU shall be included when determining compliance with this requirement.

(ii) The purveyor shall submit a written report to the department if no source fecal coliform data has been submitted for days when source turbidity exceeded 1.0 NTU. The report shall document why sample results are not available and shall be submitted with the routine monitoring reports for the month in which the sample results are not available.

(b) Turbidity limits.

(i) The purveyor shall ensure that the turbidity level in representative source water samples taken before primary disinfection does not exceed 5.0 NTU.

(ii) A system failing to meet the turbidity requirements in (b)(i) of this subsection may remain unfiltered, if:

(A) The purveyor demonstrates to the department's satisfaction that the most recent turbidity event was caused by unusual and unpredictable circumstances; and

(B) Including the most recent turbidity event, there have not been more than:

(I) Two turbidity events in the twelve previous calendar months the system served water to the public; or

(II) Five turbidity events in the one-hundred-twenty previous calendar months the system served water to the public.

(iii) The purveyor of a system experiencing a turbidity event shall submit a written report to the department documenting why the turbidity event(s) occurred. The purveyor shall submit the report with the routine monitoring reports for the month in which the turbidity event(s) occurred.

(iv) The purveyor of a system with alternate, department-approved sources or sufficient treated water storage may avoid a turbidity event by implementing operational adjustments to prevent water with a turbidity exceeding 5.0 NTU from being delivered to consumers.

(v) When an alternate source or treated water storage is used during periods when the turbidity of the surface or GWI source exceeds 5.0 NTU, the purveyor shall not put the surface or GWI source back on-line, until the source water turbidity is 5.0 NTU or less.

(3) Site-specific conditions to remain unfiltered.

(a) Level of inactivation.

(i) The purveyor shall ensure that the *Giardia lamblia* cyst and virus inactivation levels required under WAC 246-290-692(1) are met in at least eleven of the twelve previous calendar months that the system served water to the public.

(ii) A system failing to meet the inactivation requirements during two of the twelve previous calendar months that the system served water to the public may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that at least one of the failures was caused by unusual and unpredictable circumstances.

(iii) To make ((such)) a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the

report with the routine monitoring reports for the month in which the failure occurred.

(b) Redundant disinfection components or automatic shutoff.

The purveyor shall ensure that the requirement for redundant disinfection system components or automatic shutoff of water to the distribution system under WAC 246-290-692(3) is met at all times the system serves water to the public.

(c) Disinfectant residual entering the distribution system.

(i) The purveyor shall ensure that the requirement for having a residual entering the distribution system under WAC 246-290-692(4) is met at all times the system serves water to the public.

(ii) A system failing to meet the disinfection requirement under (c)(i) of this subsection may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the failure was caused by unusual and unpredictable circumstances.

(iii) To make ((such)) a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(d) Disinfectant residuals within the distribution system.

(i) The purveyor shall ensure that the requirement for maintaining a residual within the distribution system under WAC 246-290-692(5) is met on an ongoing basis.

(ii) A system failing to meet the disinfection requirements under (d)(i) of this subsection may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the failure was caused by something other than a deficiency in source water treatment.

(iii) To make ((such)) a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(e) Watershed control.

(i) The purveyor shall develop and implement a department-approved watershed control program.

(ii) The purveyor shall monitor, limit, and control all facilities and activities in the watershed affecting source quality to preclude degradation of the physical, chemical, microbiological (including viral contamination and contamination by *Cryptosporidium* oocysts), and radiological quality of the source. The purveyor shall demonstrate, through ownership and/or written agreements acceptable to the department, control of all human activities that may adversely impact source quality.

(iii) At a minimum, the purveyor's watershed control program shall:

(A) Characterize the watershed hydrology and land ownership;

(B) Identify watershed characteristics and activities that may adversely affect source water quality; and

(C) Monitor the occurrence of activities that may adversely affect source water quality.

(iv) If the department determines significant changes have occurred in the watershed, the purveyor shall submit,

within ninety days of notification, an updated watershed control program to the department for review and approval.

(v) The department may require an unfiltered system to conduct additional monitoring to demonstrate the adequacy of the watershed control program.

(vi) A purveyor shall be considered out of compliance when failing to:

(A) Have a department-approved watershed control program;

(B) Implement the watershed control program to the satisfaction of the department; or

(C) Conduct additional monitoring as directed by the department.

(f) On-site inspections.

(i) The department shall conduct on-site inspections to assess watershed control and disinfection treatment.

(ii) The department shall conduct annual inspections unless more frequent inspections are deemed necessary to protect the health of consumers served by the system.

(iii) For a system to remain unfiltered, the on-site inspection shall indicate to the department's satisfaction that the watershed control program and disinfection treatment comply with (e) of this subsection and WAC 246-290-692, respectively.

(iv) The purveyor with unsatisfactory on-site inspection results shall take action as directed by the department in accordance with a department-established schedule.

(g) Waterborne disease outbreak.

(i) To remain unfiltered, a system shall not have been identified by the department as the cause of a waterborne disease outbreak attributable to a failure in treatment of the surface or GWI source.

(ii) The purveyor of a system identified by the department as the cause of a waterborne disease outbreak may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that system facilities and/or operations have been sufficiently modified to prevent another waterborne disease outbreak.

(h) Total coliform MCL.

(i) For a system to remain unfiltered, the purveyor shall ensure that the MCL for total coliform under WAC 246-290-310 is met in at least eleven of the twelve previous calendar months the system served water to the public.

(ii) A system failing to meet the criteria in (i) of this subsection, may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the total coliform MCL violations were not caused by a deficiency in source water treatment.

(iii) The department shall determine the adequacy of source water treatment based on results of total coliform monitoring at the entry to the distribution system in accordance with WAC 246-290-694(3).

(i) Disinfectant residuals MRDL and disinfection by-products MCLs - Monitoring and compliance.

For a system to remain unfiltered, the purveyor shall comply with the monitoring and MCL requirements under WAC 246-290-300((=7)) (6) and 246-290-310 (5) and (6), respectively.

(j) Laboratory services.

(i) For a system to remain unfiltered, the purveyor shall retain the services of the public health laboratory or another laboratory certified by the department to analyze samples for total and fecal coliform. Laboratory services shall be available on an as needed basis, seven days a week, including holidays. The purveyor shall identify in the annual comprehensive report required under WAC 246-290-696 the certified laboratory providing these services.

(ii) The department may waive this requirement, if the purveyor demonstrates to the department's satisfaction that an alternate, department-approved source is used when the turbidity of the surface or GWI source exceeds 1.0 NTU.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-692 Disinfection for unfiltered systems.** (1) General requirements.

(a) The purveyor without a limited alternative to filtration shall:

(i) Provide continuous disinfection treatment to ensure at least 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts and 99.99 percent (4 log) inactivation of viruses at all times the system serves water to the public.

(ii) Failure to provide the required inactivation level on more than one day in any calendar month shall be considered a treatment technique violation.

(b) The purveyor with a limited alternative to filtration shall meet the treatment requirements in WAC 246-290-630(11) at all times the system serves water to the public.

(c) The purveyor may be required to provide greater levels of inactivation of *Giardia lamblia* cysts, other pathogenic microorganisms of public health concern, and viruses to protect the health of consumers.

~~((d) Failure to meet the inactivation level requirements of WAC 246-290-690 (3)(a) or 246-290-691 (3)(a) shall be considered a violation.))~~

(2) Determining the level of inactivation.

(a) Each day the system without a limited alternative to filtration serves water to the public, the purveyor, using procedures and CT<sub>99.9</sub> values specified in 40 CFR 141.74, Vol. 54, No. 124, (published June 29, 1989(~~and copies of which are available from the department~~)), shall determine:

(i) CT values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's disinfection treatment process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts and viruses required by the department. For purposes of determining compliance with the inactivation requirements specified in subsection (1) of this section, no credit shall be granted for disinfection applied to a source water with a turbidity greater than 5.0 NTU.

(b) Each day the system with a limited alternative to filtration serves water to the public, the purveyor, using appropriate guidance, shall determine:

(i) CT values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's treatment process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of health concern including *Cryptosporidium* oocysts that would be greater than what would be expected from the combination of filtration plus chlorine disinfection.

(c) The purveyor shall be considered in compliance with the daily inactivation requirement when a total inactivation ratio equal to or greater than 1.0 is achieved.

(d) The purveyor of a system using a disinfectant or combination of disinfectants may use CT values lower than those specified in (a) of this subsection, if the purveyor demonstrates to the department's satisfaction that the required levels of inactivation of *Giardia lamblia* cysts, viruses, and, if providing a limited alternative to filtration, any other pathogenic organisms of public health concern including *Cryptosporidium* oocysts, can be achieved using the lower CT values.

(e) The purveyor of a system using preformed chloramines or adding ammonia to the water before chlorine shall demonstrate to the department's satisfaction that the system achieves at least 99.99 percent (4 log) inactivation of viruses.

(3) The purveyor using either unfiltered or "limited alternative to filtration" treated sources shall ensure that disinfection facilities provide either:

(a) Redundant components, including an auxiliary power supply with automatic start up and alarm, to ensure continuous disinfection. Redundancy shall ensure that both the minimum inactivation requirements and the requirement for a 0.2 mg/L residual disinfectant concentration at entry to the distribution system are met at all times water is delivered to the distribution system; or

(b) Automatic shutoff of delivery of water to the distribution system when the residual disinfectant concentration in the water is less than 0.2 mg/L. Automatic shutoff shall be allowed only in systems where the purveyor demonstrates to the department's satisfaction that automatic shutoff will not endanger health or interfere with fire protection.

(4) Disinfectant residual entering the distribution system.

(a) The purveyor shall ensure that water entering the distribution system contains a residual disinfectant concentration, measured as free or combined chlorine, of at least 0.2 mg/L at all times the system serves water to the public; and

(b) Failure to provide a 0.2 mg/L residual at entry to distribution for more than four hours on any day shall be considered a treatment technique violation.

(5) Disinfectant residuals within the distribution system.

(a) The purveyor shall ensure that the residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide, is detectable in at least ninety-five percent of the samples taken each calendar month.

(b) The purveyor of a system that purchases completely treated surface or GWI water as determined by the department shall comply with the requirements specified in (a) of this subsection.

(c) Water in the distribution system with an HPC level less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-694 Monitoring for unfiltered systems.** (1) Source coliform monitoring for systems without a limited alternative to filtration.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are representative and:

(i) Collected before the first point of disinfectant application; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) The purveyor shall ensure source samples are collected for fecal coliform analysis each week the system serves water to the public based on the following schedule:

Population Served	Minimum Number/week*
25 - 500	1
501 - 3,300	2
3,301 - 10,000	3
10,001 - 25,000	4
>25,000	5

\*Must be taken on separate days.

(c) Each day the system serves water to the public and the turbidity of the source water exceeds 1.0 NTU, the purveyor shall ensure one representative source water sample is collected before the first point of disinfectant application and analyzed for fecal coliform density. This sample shall count toward the weekly source coliform sampling requirement.

(d) The purveyor using a surface water or GWI source and that meets the criteria to remain unfiltered under WAC 246-290-690, shall collect at least one sample near the first service connection each day the turbidity level of the source water, measured as specified under WAC 246-290-694, exceeds 1 NTU. This sample must be analyzed for the presence of total coliform. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within twenty-four hours of the first exceedance, unless the department determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within thirty hours of collection. Sample results from this coliform monitoring must be included in determining compliance with the MCL for total coliforms under WAC 246-290-310(2).

(e) A purveyor shall not be considered in violation of (c) of this subsection, if the purveyor demonstrates to the department's satisfaction that, for valid logistical reasons outside the purveyor's control, the additional fecal coliform sample could not be analyzed within a time frame acceptable to the department.

(2) Source coliform monitoring for systems with a limited alternative to filtration.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are:

(i) Collected before the first point of primary disinfection; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) At a minimum, the purveyor shall ensure source samples are collected for fecal coliform analysis at a frequency equal to ten percent the number of routine coliform samples collected within the distribution system each month under WAC 246-290-300, or once per calendar month, whichever is greater, up to a maximum of one sample per day.

(3) Coliform monitoring at entry to distribution for systems without a limited alternative to filtration.

(a) The purveyor shall collect and have analyzed one coliform sample at the entry point to the distribution system each day that a routine or repeat coliform sample is collected within the distribution system under WAC 246-290-300(3) or 246-290-320(2), respectively.

(b) The purveyor shall use the results of the coliform monitoring at entry to distribution along with inactivation ratio monitoring results to demonstrate the adequacy of source treatment.

(4) Source turbidity monitoring for systems without a limited alternative to filtration.

(a) The purveyor shall continuously monitor and record turbidity:

(i) On representative source water samples before the first point of primary disinfectant application; and

(ii) In accordance with the analytical techniques ~~((under))~~ in WAC 246-290-638.

(b) If source water turbidity is not the same as the turbidity of water delivered to consumers, the purveyor shall continuously monitor and record turbidity of water delivered.

(5) Source turbidity monitoring for systems with a limited alternative to filtration. The purveyor shall:

(a) Continuously monitor turbidity on representative source samples before the first point of primary disinfection application;

(b) Record continuous turbidity measurements at equal intervals, of at least four hours, in accordance with a department-approved sampling schedule; and

(c) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(6) Monitoring the level of inactivation.

(a) Each day the system is in operation, the purveyor shall determine the total level of inactivation of *Giardia lamblia* cysts, viruses, and, if providing a limited alternative to filtration, any other pathogenic organisms of health concern including *Cryptosporidium* oocysts, achieved through disinfection.

(b) At least once per day, the purveyor shall monitor the following parameters to determine the total inactivation ratio achieved through disinfection:

(i) Temperature of the disinfected water at each residual disinfectant concentration sampling point used for CT calculations; and

(ii) If using chlorine, pH of the disinfected water at each chlorine residual disinfectant concentration sampling point used for CT calculations.

(c) Each day during peak hourly flow, the purveyor shall:

(i) Determine disinfectant contact time, T, to the point at which C is measured; and

(ii) Measure the residual disinfectant concentration, C, of the water at the point for which T is calculated. The C measurement point must be before or at the first consumer.

(7) Monitoring the residual disinfectant concentration entering the distribution system for either unfiltered systems, or systems using a limited alternative to filtration.

(a) Systems serving more than thirty-three hundred people.

(i) The purveyor shall continuously monitor and record the residual disinfectant concentration of water entering the distribution system and report the lowest value each day.

(ii) If the continuous monitoring equipment fails, the purveyor shall measure the residual disinfectant concentration on grab samples collected at least every four hours at the entry to the distribution system while the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment back on-line within five working days following failure.

(b) Systems serving thirty-three hundred or less people.

(i) The purveyor shall collect grab samples or use continuous monitoring and recording to measure the residual disinfectant concentration entering the distribution system.

(ii) A purveyor choosing to take grab samples shall collect:

(A) Samples at the following minimum frequencies:

Population Served	Number/day
25 - 500	1
501 - 1,000	2
1,001 - 2,500	3
2,501 - 3,300	4

(B) At least one of the grab samples at peak hourly flow based on historical flows for the system; and

(C) The remaining sample or samples at intervals evenly spaced over the time the system is disinfecting water that will be delivered to the public.

(iii) When grab samples are collected and the residual disinfectant concentration at the entry to distribution falls below 0.2 mg/L, the purveyor shall collect a grab sample every four hours until the residual disinfectant concentration is 0.2 mg/L or more.

(8) Monitoring residual disinfectant concentration within the distribution system for either ~~((unfiltration))~~ unfiltered systems, or systems using a limited alternative to filtration.

(a) The purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected ~~((in accordance with))~~ under WAC 246-290-300(3) or 246-290-320(2) or once per day, whichever is greater.

(b) The purveyor of a system that purchases completely treated surface or GWI water as determined by the department shall comply with the requirements of (a) of this subsection or as otherwise directed by the department under WAC 246-290-300 (2)(c). At a minimum, the purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected ~~((in accordance with))~~ under WAC 246-290-300(3) or 246-290-320(2).

(c) The purveyor may measure HPC within the distribution system in lieu of measuring the residual disinfectant concentration ~~((in accordance with))~~ under this subsection.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-71001 Public notification.** (1) The purveyor shall notify the water system users and the owner or operator of any consecutive water system served in accordance with 40 CFR 141.201 through 208. Notice is to be provided when the system violates a National Primary Drinking Water Regulation and when any of the situations listed in Table 1 of 40 CFR 141.201 occur, except for (3)~~((b))~~ (ii). Public notifications for violations and other situations are categorized into the following Tiers ~~((in accordance with the following))~~:

(a) Tier 1 as described in Table 1 of 40 CFR 141.202(a);

(b) Tier 2 as described in Table 1 of 40 CFR 141.203(a);  
or

(c) Tier 3 as described in Table 1 of 40 CFR 141.204(a).

(2) The purveyor shall initiate consultation with the department as soon as possible, but no later than twenty-four hours after they learn their system has a Tier 1 violation or situation in order to determine if additional public notice is required. The purveyor shall comply with any additional public notification requirements established as a result of the consultation.

(3) The purveyor shall notify the water system users when the system:

(a) Is issued a ~~((departmental))~~ department order;

(b) Fails to comply with a ~~((departmental))~~ department order; or

(c) Is issued a category red operating permit.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-71005 Special public notification requirements.** (1) The purveyor of community or NTNC water systems required to monitor under WAC 246-290-300~~((8))~~ (7) shall notify the water system users of the availability of the results of monitoring for unregulated contaminants no later than twelve months after the monitoring results are known. The form and manner of the public notice to the water system users shall be in accordance with 40 CFR 141.204 (c), (d)(1), and (d)(3). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

(2) The purveyor of a community water system that experiences a secondary MCL violation for fluoride shall provide notice, in accordance with the form, manner, timing and content requirements of 40 CFR 141.208.

(3) The purveyor of a water system using surface water or GWI sources that repeatedly fails to monitor for *Cryptosporidium* or determine the bin classification or mean *Cryptosporidium* level, must notify the public under 40 CFR 141.211.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-72001 Purpose and applicability of the consumer confidence report requirements.** WAC 246-290-72001 through 246-290-72012 establishes minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(1) ~~((Notwithstanding the provisions of WAC 246-290-020,))~~ This section applies only to community water systems.

(2) For the purpose of WAC 246-290-72001 through 246-290-72012:

(a) "Customers" means billing units or service connections to which water is delivered by a community water system.

(b) "Detected" means at or above the levels prescribed by WAC 246-290-300(4) for inorganic contaminants, at or above the levels prescribed by WAC 246-290-300~~((8))~~ (7) for organic contaminants, and at or above the levels prescribed by 40 CFR 141.25(c) for radioactive contaminants.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-72005 Report contents—Information on detected contaminants.** (1) This section specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring. It applies to:

(a) Contaminants subject to an MCL, action level, maximum residual disinfectant level or treatment technique (regulated contaminants);

(b) Contaminants for which monitoring is required ~~((by WAC 246-290-300(9)))~~ under 40 CFR 140.40; and

(c) Disinfection by-products for which monitoring is required by WAC 246-290-300~~((7))~~ (6) and 40 CFR 141.142 or microbial contaminants for which monitoring is required by WAC 246-290-300(3) and 40 CFR 141.143, except as provided under WAC 246-290-72006(1), and which are detected in the finished water.

(2) The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

(3) The data must be derived from data collected to comply with ~~((the Environmental Protection Agency))~~ EPA and state monitoring and analytical requirements during the previous calendar year except that:

(a) Where a system is allowed to monitor for regulated contaminants less than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included.

(b) Results of monitoring in compliance with 40 CFR 141.142 and 40 CFR 141.143 need only be included for five years from the date of last sample or until any of the detected



contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(4) For detected regulated contaminants listed in WAC 246-290-72012, the table(s) must contain:

(a) The MCL for that contaminant expressed as a number equal to or greater than 1.0 (as provided in WAC 246-290-72012);

(b) The MCLG for that contaminant expressed in the same units as the MCL;

(c) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in WAC 246-290-72004;

(d) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with a National Primary Drinking Water Regulation and the range of detected levels, as follows:

(i) When compliance with the MCL is determined annually or less frequently: The highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: The highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points: The average and range of detection expressed in the same units as the MCL.

(iv) Note to WAC 246-290-72005 (4)(d): When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in WAC 246-290-72012;

(e) For turbidity.

(i) When it is reported under chapter 246-290 WAC Part 6, Subpart C: The highest average monthly value.

(ii) When it is reported under the requirements of chapter 246-290 WAC Part 6, Subpart D: The highest monthly value. The report should include an explanation of the reasons for measuring turbidity.

(iii) When it is reported under chapter 246-290 WAC Part 6, Subpart B: The highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in chapter 246-290 WAC Part 6, Subpart B for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity;

(f) For lead and copper: The 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;

(g) For total coliform:

(i) The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or

(ii) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month;

(h) For fecal coliform: The total number of positive samples; and

(i) The likely source(s) of detected contaminants to the best of the purveyor's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the purveyor. If the purveyor lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in WAC 246-290-72012 which are most applicable to the system.

(5) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce separate reports tailored to include data for each service area.

(6) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques and the report must contain a clear and readily understandable explanation of the violation including: The length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language of WAC 246-290-72012.

(7) For detected unregulated contaminants for which monitoring is required, the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

**WAC 246-290-72006 Report contents—Information on Cryptosporidium, radon, and other contaminants.** (1) If the system has performed any monitoring for Cryptosporidium, (~~including monitoring performed to satisfy the requirements of 40 CFR 141.143 which~~) and the results indicate(s) that Cryptosporidium may be present in the source water or the finished water, the report must include:

(a) A summary of the results of the monitoring; and

(b) An explanation of the significance of the results.

(2) If the system has performed any monitoring for radon which indicates that radon may be present in the finished water, the report must include:

(a) The results of the monitoring; and

(b) An explanation of the significance of the results.

(3) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the department strongly encourages systems to report any results which may indicate a health concern. To determine if results may indicate a health concern, the department recommends that systems find out if (~~the Environmental Protection Agency~~) EPA has proposed a National Primary Drinking Water Regulation or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800-426-4791). (~~The Environmental Protection Agency~~) EPA considers detects above a proposed MCL or

health advisory level to indicate possible health concerns. For ~~((such))~~ the contaminants, the department recommends that the report include:

- (a) The results of the monitoring; and
- (b) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-72007 Report contents—Compliance with National Primary Drinking Water Regulations.** In addition to the requirements of WAC 246-290-72005(6), the report must note any violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation.

- (1) Monitoring and reporting of compliance data;
- (2) Filtration and disinfection prescribed by chapter 246-290 WAC, Part 6. For systems which have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of the equipment or processes which constitutes a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
- (3) Lead and copper control requirements prescribed by WAC 246-290-025, specifically CFR 141.80 through 141.91: For systems which fail to take one or more actions prescribed by WAC 246-290-025, specifically CFR 141.80 through 141.84, the report must include the applicable language of WAC 246-290-72012 for lead, copper, or both.
- (4) Treatment techniques for Acrylamide and Epichlorohydrin prescribed by ~~((40 CFR, Subpart K))~~ WAC 246-290-480 (2)(k). For systems which violate the requirements of ~~((40 CFR, Subpart K))~~ WAC 246-290-480 (2)(k), the report must include the relevant language from WAC 246-290-72012.
- (5) Recordkeeping of compliance data.
- (6) Special monitoring requirements prescribed ~~((by))~~ under WAC ((246-290-300(9) (unregulated contaminants) and)) 246-290-310(3) ~~((sodium))~~; and
- (7) Violation of the terms of a variance, an exemption, or an administrative or judicial order.

AMENDATORY SECTION (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-72010 Report contents—Required additional health information.** All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should

seek advice about drinking water from their health care providers. Environmental Protection Agency/Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(1) Beginning in the report due by July 1, 2002, a system which detects arsenic levels above 0.005 mg/L and up to and including 0.010 mg/L:

(a) Must include in its report a short informational statement about arsenic, using language such as: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

(b) May write its own educational statement, but only in consultation with the department.

(2) A system which detects nitrate at levels above 5 mg/l, but below the MCL:

(a) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue-baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should ask for advice from your health care provider.

(b) May write its own educational statement, but only in consultation with the department.

(3) Systems which detect lead above the action level in more than five percent, and up to and including ten percent, of homes sampled:

(a) Must include a short informational statement about the special impact of lead on children using language such as: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for thirty seconds to two minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

(b) May write its own educational statement, but only in consultation with the department.

~~((4) Community water systems that detect TTHM above 0.080 mg/l, but below the MCL in WAC 246-290-310(4), as an annual average, monitored and calculated under the provisions of WAC 246-290-300(6), must include health effects language prescribed by WAC 246-290-72012.~~

~~((5) Beginning in the report due by July 1, 2002, and ending January 22, 2006, a community water system that detects arsenic above 0.01 mg/L and up to and including 0.05 mg/L must include the arsenic health effects language prescribed in WAC 246-290-72012.))~~

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

**WAC 246-290-72011 Report delivery and record-keeping.** Each community water system must mail or otherwise directly deliver one copy of the report to each customer.

(1) The system must make a good faith effort to reach consumers who do not get water bills. The department expects that an adequate good faith effort will be tailored to the consumers who are served by the system but are not bill-paying customers, such as renters or workers. A good faith effort to reach consumers would include a mix of methods appropriate to the particular system such as: Posting the reports on the internet; mailing to postal patrons in metropolitan areas; advertising the availability of the report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunch rooms of public buildings; delivery of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers; delivery to community organizations.

(2) No later than the date the system is required to distribute the report to its customers, each community water system must ~~((mail))~~ submit a copy of the report to the department, followed within three months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the department.

(3) No later than the date the system is required to distribute the report to its customers, each community water system must deliver the report to any other agency or clearing-house identified by the department.

(4) Each community water system must make its reports available to the public upon request.

(5) Each community water system serving one hundred thousand or more persons must post its current year's report to a publicly accessible site on the internet.

(6) Any system subject to WAC 246-290-72001 through 246-290-72012 must retain copies of its consumer confidence report for no less than three years.

AMENDATORY SECTION (Amending WSR 04-04-056, filed 1/30/04, effective 3/1/04)

**WAC 246-290-72012 Regulated contaminants.**

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
<b>Microbiological Contaminants</b>						
Total Coliform Bacteria	MCL: (systems that collect ≥ 40 samples/ month) <u>more than 5%</u> of monthly samples are positive; (systems that collect < 40 samples/ month) <del>((1-positive monthly sample))</del> <u>2 or more positive samples per monthly sampling period</u>		MCL: (systems that collect ≥ 40 samples/ month) <u>more than 5%</u> of monthly samples are positive; (systems that collect < 40 samples/ month) <del>((1-positive monthly sample))</del> <u>2 or more positive samples per monthly sampling period</u>	0	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform and <i>E. coli</i>	0		0	0	Human and animal fecal waste	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely-compromised immune systems.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Total organic carbon (ppm)	TT	-	TT	n/a	Naturally present in the environment	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by-products. These by-products include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Turbidity (NTU)	TT.	-	TT	n/a	Soil runoff	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
<u>Giardia lamblia</u> Viruses. <u>Cryptosporidium</u>	TT.	=	TT.	n/a	Human and animal fecal waste	<u>Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.</u>
Heterotrophic plate count (HPC) bacteria	TT.	=	TT.	n/a	HPC measures a range of bacteria that are naturally present in the environment	<u>Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.</u>
<u>Legionella</u>	TT.	=	TT.	n/a	<u>Found naturally in water; multiplies in heating systems</u>	<u>Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.</u>
<b>Radioactive Contaminants</b>						
Beta/photon emitters (mrem/yr)	4 mrem/yr	-	4	n/a 0	Decay of natural and man-made deposits	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Alpha emitters (pCi/l)	15 pCi/l	-	15	n/a 0	Erosion of natural deposits	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/l)	5 pCi/l	-	5	n/a 0	Erosion of natural deposits	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium (pCi/l)	30 micro g/l	-	30	0	Erosion of natural deposits	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
<b>Inorganic Contaminants</b>						
Antimony (ppb)	.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb)	.05	1000	50	n/a	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
*Effective 1/23/06	0.010	1000	10	0		
Asbestos (MFL)	7 MFL	-	7	7	Decay of asbestos cement water mains; Erosion of natural deposits	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2	-	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium (ppb)	.004	1000	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium (ppb)	.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Chromium (ppb)	.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Copper (ppm)	AL = 1.3	-	AL = 1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4	-	4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead (ppb)	AL = .015	1000	AL = 15	0	Corrosion of household plumbing systems; Erosion of natural deposits	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Mercury [inorganic] (ppb)	.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Nitrate (ppm)	10	-	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite (ppm)	1	-	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb)	.05	1000	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb)	.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
<b>Synthetic Organic Contaminants including Pesticides and Herbicides</b>						
2,4-D (ppb)	.07	1000	70	70	Runoff from herbicide used on row crops	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP [Silvex](ppb)	.05	1000	50	50	Residue of banned herbicide	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Acrylamide	TT	-	TT	0	Added to water during sewage/ wastewater treatment	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Alachlor (ppb)	.002	1000	2	0	Runoff from herbicide used on row crops	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Atrazine (ppb)	.003	1000	3	3	Runoff from herbicide used on row crops	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene [PAH] (nanograms/l)	.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	.002	1000	2	0	Residue of banned termiticide	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	.2	1000	200	200	Runoff from herbicide used on rights of way	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl) adipate (ppb)	.4	1000	400	400	Discharge from chemical factories	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects or reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb)	.006	1000	6	0	Discharge from rubber and chemical factories	Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloropropane (ppt)	.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb)	.02	1000	20	20	Runoff from herbicide use	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.



Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Dioxin [2,3,7,8-TCDD] (ppq)	.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; Discharge from chemical factories	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Endothall (ppb)	.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT	-	TT	0	Discharge from industrial chemical factories; An impurity of some water treatment chemicals	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt)	.00005	1,000,000	50	0	Discharge from petroleum refineries	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	.7	1000	700	700	Runoff from herbicide use	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor (ppt)	.0004	1,000,000	400	0	Residue of banned pesticide	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide (ppt)	.0002	1,000,000	200	0	Breakdown of heptachlor	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Hexachlorocyclo-pentadiene (ppb)	.05	1000	50	50	Discharge from chemical factories	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl [Vydate] (ppb)	.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
PCBs [Polychlorinated biphenyls] (ppt)	.0005	1,000,000	500	0	Runoff from landfills; Discharge of waste chemicals	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachlorophenol (ppb)	.001	1000	1	0	Discharge from wood preserving factories	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	.5	1000	500	500	Herbicide runoff	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	.004	1000	4	4	Herbicide runoff	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
<b>Volatile Organic Contaminants</b>						

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Benzene (ppb)	.005	1000	5	0	Discharge from factories; Leaching from gas storage tanks and landfills	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Bromate (ppb)	.010	1000	10	0	By-product of drinking water disinfection	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Carbon tetrachloride (ppb)	.005	1000	5	0	Discharge from chemical plants and other industrial activities	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chloramines (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who use drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who use drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorite (ppm)	1	-	1	0.8	By-product of drinking water disinfection	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine dioxide (ppb)	MRDL = .8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Chlorobenzene (ppb)	.1	1000	100	100	Discharge from chemical and agricultural chemical factories	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	.6	1000	600	600	Discharge from industrial chemical factories	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene (ppb)	.075	1000	75	75	Discharge from industrial chemical factories	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene (ppb)	.007	1000	7	7	Discharge from industrial chemical factories	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	.07	1000	70	70	Discharge from industrial chemical factories	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene (ppb)	.1	1000	100	100	Discharge from industrial chemical factories	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	.005	1000	5	0	Discharge from pharmaceutical and chemical factories	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene (ppb)	.7	1000	700	700	Discharge from petroleum refineries	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Haloacetic Acids (HAA) (ppb)	.060	1000	60	n/a	By-product of drinking water disinfection	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Styrene (ppb)	.1	1000	100	100	Discharge from rubber and plastic factories; Leaching from landfills	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene (ppb)	.005	1000	5	0	Discharge from factories and dry cleaners	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichlorobenzene (ppb)	.07	1000	70	70	Discharge from textile-finishing factories	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	.2	1000	200	200	Discharge from metal degreasing sites and other factories	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	.005	1000	5	3	Discharge from industrial chemical factories	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloroethylene (ppb)	.005	1000	5	0	Discharge from metal degreasing sites and other factories	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
TTHMs [Total trihalomethanes] (ppb)	<del>((0.10/))</del> .080	1000	<del>((100/))</del> 80	n/a	By-product of drinking water disinfection	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
Toluene (ppm)	1	-	1	1	Discharge from petroleum factories	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl Chloride (ppb)	.002	1000	2	0	Leaching from PVC piping; Discharge from plastics factories	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10	-	10	10	Discharge from petroleum factories; Discharge from chemical factories	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
<p><b>Key</b></p> <p><b>AL</b> = Action Level</p> <p><b>MCL</b> = Maximum Contaminant Level</p> <p><b>MCLG</b> = Maximum Contaminant Level Goal</p> <p><b>MFL</b> = million fibers per liter</p> <p><b>MRDL</b> = Maximum Residual Disinfectant Level</p> <p><b>MRDLG</b> = Maximum Residual Disinfectant Level Goal</p> <p><b>mrem/year</b> = millirems per year (a measure of radiation absorbed by the body)</p> <p><b>N/A</b> = Not Applicable</p> <p><b>NTU</b> = Nephelometric Turbidity Units (a measure of water clarity)</p> <p><b>pCi/l</b> = picocuries per liter (a measure of radioactivity)</p> <p><b>ppm</b> = parts per million, or milligrams per liter (mg/l)</p> <p><b>ppb</b> = parts per billion, or micrograms per liter (<math>\mu</math>g/l)</p> <p><b>ppt</b> = parts per trillion, or nanograms per liter</p> <p><b>ppq</b> = parts per quadrillion, or picograms per liter</p> <p><b>TT</b> = Treatment Technique</p>						

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

**WAC 246-290-820 Distribution system leakage standard.** (1) Municipal water suppliers shall determine distribution system leakage annually ~~((in accordance with))~~ under subsection (2) of this section or an alternative methodology ~~((in accordance with))~~ under subsection (3) of this section.

(a) Municipal water suppliers shall include (i), (ii), or (iii) of this subsection in water use efficiency performance reports developed under WAC 246-290-840 and water use efficiency programs developed under WAC 246-290-810:

(i) Distribution system leakage totals calculated ~~((in accordance with))~~ under subsection (2) of this section shall be recorded in annual percent and volume;

(ii) Distribution system leakage totals calculated ~~((in accordance with))~~ under subsection (3) of this section shall include annual figures and the ~~((chosen))~~ approved alternative methodology's numerical standard(s); and

(iii) For systems not fully metered, the status of meter installation and any actions taken to minimize leakage.

(b) Municipal water suppliers will be considered in compliance with this section if any of the following conditions are satisfied:

(i) Distribution system leakage calculated in accordance with subsection (2) of this section is ten percent or less for the last three-year average;

(ii) Distribution system leakage calculated ~~((in accordance with))~~ under subsection (3) of this section meets the ~~((compliance level(s) established under subsection (3)(e) of this section))~~ numerical standards for the approved alternative methodology for the last three-year average;

(iii) For systems serving less than five hundred total connections, distribution system leakage calculated in accordance with subsection (2) of this section is ~~((less than))~~ twenty percent or less for the last three-year average and the steps outlined in subsection (5) of this section are completed; or

(iv) A water loss control action plan has been developed and implemented ~~((in accordance with))~~ under subsection (4) of this section and the system is meeting the implementation schedule.

(2) Calculate the percent of distribution system leakage annually using the following equation:

$$DSL = [(TP - AC)/(TP)] \times 100$$

Where:

DSL = Percent of Distribution System Leakage (%)

TP = Total Water Produced and Purchased

AC = Authorized Consumption

(a) Total water produced and purchased, and authorized consumption must be calculated using data from meters installed under WAC 246-290-496. Elements of authorized consumption that cannot be metered, such as fire flow, must be estimated.

(b) All or portions of transmission lines may be excluded when determining distribution system leakage.

(c) Any water that cannot be accounted for shall be considered distribution system leakage.

(3) Municipal water suppliers may use an alternative methodology to calculate distribution system leakage if both (a) and (b) of this subsection are satisfied.

(a) The alternative methodology is contained in published standards or specifications of the department, Environmental Protection Agency, American Water Works Association, American Public Works Association, or American Society of Civil Engineers.

(b) The alternative methodology is approved for state-wide use by the department, to provide a better evaluation of distribution system leakage than percent of total water produced and purchased, is appropriate for the system requesting to use it, and uses numerical standards so that compliance and action levels can be determined.

(4) If the average distribution system leakage for the last three years does not meet the standard calculated (~~(in accordance with)~~ under subsection (1)(b)(i), (ii), or (iii) of this section, the municipal water supplier shall develop and implement a water loss control action plan. Municipal water suppliers shall submit the water loss control action plan to the department as part of a water use efficiency program under WAC 246-290-810 and upon request by the department. The control methods described in a water loss control action plan shall be commensurate with the level of leakage reported. The following items shall be included in the water loss control action plan:

- (a) The control methods necessary to achieve compliance with the distribution system leakage standard;
- (b) An implementation schedule;
- (c) A budget that demonstrates how the control methods will be funded;
- (d) Any technical or economic concerns which may affect the system's ability to implement a program or comply with the standard including past efforts and investments to minimize leakage;
- (e) If the average distribution system leakage calculated under subsection (2) of this section is greater than ten and less than (~~nineteen~~) twenty percent of total water produced and purchased, the water loss control action plan must assess data accuracy and data collection;
- (f) If the average distribution system leakage calculated under subsection (2) of this section is between twenty and twenty-nine percent of total water produced and purchased, the water loss control action plan must include elements listed under (e) of this subsection and implementation of field activities such as actively repairing leaks or maintaining meters within twelve months of determining standard exceedance;
- (g) If the average distribution system leakage calculated under subsection (2) of this section is at thirty percent or above the total water produced and purchased, the water loss control action plan must include elements listed under (e) and (f) of this subsection and include implementation of additional control methods to reduce leakage within six months of determining standard exceedance; and
- (h) If the average distribution system leakage calculated under subsection (3) of this section is over the approved alternative methodology's numerical standard, the department will take appropriate compliance actions and work collaboratively with the municipal water supplier to ensure the control methods and level of activity are commensurate with the level of leakage.

(5) Systems serving less than five hundred total connections may submit a request to the department for approval of an average distribution system leakage up to twenty percent. The following information must be submitted to the department with the request:

- (a) Production volume;
- (b) Distribution system leakage volume;
- (c) Evidence documenting that:
  - (i) A leak detection survey using best available technologies has been completed on the system within the past six years;
  - (ii) All leaks found have been repaired;

- (iii) The system is unable to locate additional leaks; and
- (iv) Ongoing efforts to minimize leakage are included as part of the system's water use efficiency program; and
- (d) Any technical concerns or economic concerns, or other system characteristics justifying the higher distribution system leakage.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 07-20-058**  
**PROPOSED RULES**  
**DAIRY PRODUCTS COMMISSION**

[Filed September 27, 2007, 2:47 p.m.]

Continuance of WSR 07-14-041.

Preproposal statement of inquiry was filed as WSR 07-04-088.

Title of Rule and Other Identifying Information: WAC 142-30-010, the purpose of the rule is to increase the current level of assessment on milk produced in Washington state by .00375 (3/8 cent).

Date of Intended Adoption: November 7, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule amendment is to increase the amount of the maximum authorized assessment rate on milk produced in Washington state as allowed under RCW 15.44.080(2) by adding an additional assessment of three-eighths (0.00375) of one cent per hundredweight. This increased assessment is needed to more effectively carry out the powers, duties, and purposes of the Washington dairy products commission under RCW 15.44.060 and 15.44.080(2). These activities include the following: To participate in federal and state agency hearings, meetings and other proceedings in relation to the regulation of the production, manufacture, distribution, sale or use of dairy products; to develop and engage in research for developing better and more efficient production, marketing, and utilization of agricultural products; and to protect the interests of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality.

Statutory Authority for Adoption: RCW 15.44.060, 15.44.130, 15.44.080(2).

Statute Being Implemented: RCW 15.44.080.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state dairy products commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Steve Matzen, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, (425) 672-0687; and Enforcement: Celeste Piette, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, (425) 672-0687.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington dairy products commission is not a listed agency in RCW 34.05.328 (5)(a)(i).

September 27, 2007

Steve Matzen  
General Manager

**WSR 07-20-064**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed September 28, 2007, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-049.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, Long-term care services, and WAC 388-71-0540 When will the department, AAA, or managed care entity deny payment for services of an individual provider or home care agency provider?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on November 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 6, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by October 30, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule making amends WAC 388-106-0060, 388-106-0070, 388-106-0213, and 388-71-0540 to include information pertaining to children's medicaid personal care (MPC) services including information on the new DDD CARE assessment process, updates to foster care to ensure that a foster parent providing personal care to a child residing in their licensed foster care home does not get paid twice for providing personal care services, and to assess foster children for mental health therapy needs, behaviors, and depression.

This rule making also amends personal emergency response system (PERS) language in WAC 388-106-0300 and 388-106-0500 to clarify that two people who live together who are unable to secure help in an emergency may now be eligible for a PERS unit, and adds PERS medication management language.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bev Lord/Chris Imhoff, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2536.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

September 27, 2007  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-71-0540 When will the department, AAA, or managed care entity deny payment for services of an individual provider or home care agency provider?** The department, AAA, or managed care entity will deny payment for the services of an individual provider or home care agency provider who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under Medicaid personal care;

(3) Is a foster parent providing personal care to a child residing in their licensed foster home.

(4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

~~((4))~~ (5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

~~((5))~~ (6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

~~((6))~~ (7) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;

~~((7))~~ (8) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

~~((8))~~ (9) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

~~((9))~~ In addition, the department, AAA, or managed care entity may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0060 Who must perform the assessment?** The assessment must be performed by the department.



Beginning January 1, 2008, individuals requesting personal care services will be assessed as described in the following chart:

<u>Age of person requesting an assessment for personal care services</u>	<u>Has the person been determined to meet DDD eligibility requirements?</u>	<u>Who will perform the assessment for personal care services?</u>	<u>What assessment will be used?</u>
<u>Under eighteen years of age</u>	Yes	DDD	<u>CARE/DDD Assessment per chapter 388-828 WAC</u>
<u>Under eighteen years of age</u>	No	DDD	<u>CARE/LTC Assessment per chapter 388-106 WAC</u>
<u>Eighteen years of age and older</u>	Yes	DDD	<u>CARE/DDD Assessment per chapter 388-828 WAC</u>
<u>Eighteen years of age and older</u>	No	HCS	<u>CARE/LTC Assessment per chapter 388-106 WAC</u>

AMENDATORY SECTION (Amending WSR 07-10-024, filed 4/23/07, effective 6/1/07)

**WAC 388-106-0070 Will I be assessed in CARE?** You will be assessed in CARE if you are applying for or receiving DDD services, COPES, MNIW, MNRW, MPC, chore, respite, adult day health, GAU-funded residential care, PACE, Private Duty Nursing, New Freedom or long-term care services within the MMIP or WMIP programs. ~~((You may not be assessed by forms previously used by the department once you have been assessed under CARE.))~~

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

AMENDATORY SECTION (Amending WSR 07-10-024, filed 4/23/07, effective 6/1/07)

**WAC 388-106-0213 How are my needs assessed if I am a child applying for MPC services?** If you are a child applying for MPC services, the department will complete a CARE assessment and:

- (1) Consider and document the role of your legally responsible natural/step/adoptive parent(s).
- (2) The CARE tool will determine your needs as met based on the guidelines outlined in the following table:

**Activities of Daily Living (ADLs)**

<b>Ages</b>	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
■ = Code status as Met																		
<b>Medication Management</b>																		
Independent, self-directed, administration required, or must be administered	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Locomotion in Room</b> <sup>Note</sup>																		
Independent, supervision, limited or extensive	■	■	■	■														
Total	■	■																
<b>Locomotion Outside Room</b> <sup>Note</sup>																		
Independent or supervision	■	■	■	■	■	■												
Limited or extensive	■	■	■	■														
Total	■	■																
<b>Walk in Room</b> <sup>Note</sup>																		
Independent, supervision, limited or extensive	■	■	■	■														
Total	■	■																
<b>Bed Mobility</b>																		
Independent, supervision, limited or extensive	■	■	■															
Total	■	■																
<b>Transfers</b>																		
Independent, supervision, limited, extensive or total & under 30 pounds (Total & 30 pounds or more = no age limit)	■	■	■															
<b>Toilet Use</b>																		
Support provided for nighttime wetting only (independent, supervision, limited, extensive)	■	■	■	■	■	■	■	■										

Activities of Daily Living (ADLs)

**Ages**

■ = Code status as Met

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
Independent, supervision, limited, extensive	■	■	■	■	■	■													
Total	■	■	■	■															
<b>Eating</b>																			
Independent, supervision, limited, extensive, or total	■	■	■																
<b>Bathing</b>																			
Independent or supervision	■	■	■	■	■	■	■	■	■	■	■	■							
Physical help/transfer only or physical help/part of bathing	■	■	■	■	■	■	■	■											
Total	■	■	■	■	■														
<b>Dressing</b>																			
Independent or supervision	■	■	■	■	■	■	■	■	■	■	■	■							
Limited or extensive	■	■	■	■	■	■	■	■											
Total	■	■	■	■	■														
<b>Personal Hygiene</b>																			
Independent or supervision	■	■	■	■	■	■	■	■	■	■	■	■							
Limited or extensive	■	■	■	■	■	■	■	■											
Total	■	■	■	■	■														

Instrumental Activities of Daily Living

**Ages**

■ = Code status as Met

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
<b>Telephone</b> Independent, supervision, limited, extensive, or total	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Transportation</b> Independent, supervision, limited, extensive, or total	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Shopping</b> Independent, supervision, limited, extensive, or total	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Wood Supply</b> Independent, supervision, limited, extensive, or total	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Housework</b> Independent, supervision, limited, extensive, or total	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Finances</b> Independent, supervision, limited, extensive, or total	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Meal Preparation</b> Independent, supervision, limited, extensive, or total	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

NOTE: If the activity did not occur, the department codes self performance as total and status as met.

	Ages																		
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
<b>Additional guidelines based on age</b>																			
Diagnosis	■	■	■	■	■	■													
Is client comatose? = No	■	■	■	■	■	■													
Pain Daily = No	■	■	■	■	■	■													
<b>Any foot care needs</b>																			
Status = Need met	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	
<b>Any skin care (other than feet)</b>																			
Status = Need met	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	

	Ages																	
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
<b>Speech/Hearing</b>																		
Score comprehension as understood	■	■	■															
MMSE can be administered = no	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Memory</b>																		
Short term memory ok	■	■	■	■	■	■	■	■	■	■	■	■						
Long term memory ok	■	■	■	■	■	■	■	■	■	■	■	■						
<b>Depression</b>																		
Select interview = unable to obtain	■	■	■	■	■	■	■	■	■	■	■	■						
<b>Decision making</b>																		
Rate how client makes decisions = independent	■	■	■	■	■	■	■	■	■	■	■	■						
<b>Bladder/Bowel</b>																		
Support provided for nighttime wetting only - Individual management = Does not need/use	■	■	■	■	■	■	■	■	■	■	■	■						
Support provided for daytime wetting - Individual Management = Does not need/use	■	■	■	■	■	■												
<b>Treatment</b>																		
Passive range of motion Need = No	■	■	■	■														

(3) In addition, determine that the status and assistance available are met or partially met over three-fourths of the time, when you are living with your legally responsible natural/step/adoptive parent(s).

~~((4) Will not code mental health therapy, behaviors, or depression if you are in foster care.))~~

**AMENDATORY SECTION** (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-106-0300 What services may I receive under community options program entry system (COPEs) when I live in my own home?** When you live in your own home, you may be eligible to receive only the following services under COPEs:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services as described in WAC 388-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace Medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if ~~((you))~~:

~~((a))~~ (i) You live alone in your own home; ~~((b))~~

~~((b))~~ (ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(6)(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

- (a) Medically necessary under WAC 388-500-0005;
- (b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
- (c) Directly medically or remedially beneficial to you;

and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

(10) Transportation services, when the service:

- (a) Provides access to community services and resources to meet your therapeutic goal;
- (b) Is not diverting in nature; and
- (c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

- (a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;
- (b) Your medical condition is considered stable and predictable by the delegating nurse; and
- (c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;
- (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.
- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

- (a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradica-

tion, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

- (b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-106-0500 What services may I receive under medically needy in-home waiver (MNIW)?** You may be eligible to receive only the following medically needy in-home waiver (MNIW) services in your own home:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

- (a) Are necessary to ensure your health, welfare and safety;
- (b) Enable you to function with greater independence in the home;
- (c) Directly benefit you medically or remedially;
- (d) Meet applicable state or local codes; and
- (e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

- (a) You are homebound and live in your own home;
- (b) You are unable to prepare the meal;
- (c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and
- (d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service, if the service tasks:

- (a) Include assistance with ambulation, exercise, self-administered medications and hands on personal care;
- (b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services (WAC 388-551-2120) and are in addition to those available services;
- (c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and
- (d) Do not replace Medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if ((you)):

- ((a)) (i) You live alone in your own home; ((a))
- ((b)) (ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(6)(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2120.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 388-500-0005;

(b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services if you live in your own home, when the service:

(a) Provides access to community services and resources to meet a therapeutic goal;

(b) Is not diverting in nature;

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication

administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource;

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service planning and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 07-20-081**  
**PROPOSED RULES**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed October 1, 2007, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-045.

Title of Rule and Other Identifying Information: Chapter 352-18 WAC, Background checks for job applicants, volunteers, and independent contractors, this proposal creates a new chapter that establishes the requirements for criminal history record information searches for state parks' job applicants, volunteers, and independent contractors.

Hearing Location(s): Lakeway Inn and Conference Center, 714 Lakeway Drive, Bellingham, WA 98229, (360) 671-1011 or fax (360) 676-8519, on November 15, 2007, at 9:00 a.m.

Date of Intended Adoption: November 15, 2007.

Submit Written Comments to: Pamela McConkey, P.O. Box 42650, Tumwater, WA 90850-2650 [98504-2650], e-mail Pamela.McConkey@parks.wa.gov, phone (360) 902-8595, fax (360) 664-2106, by November 8, 2007.

Assistance for Persons with Disabilities: Contact Pauli Larson by November 1, 2007, TTY (360) 664-3133 or (360) 902-8505.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2005, the legislature directed state parks to adopt rules establishing the requirements for a criminal history record information search for job applicants, volunteers and independent contractors who have unsupervised access to children or vulnerable adults, or who will be responsible for collecting or disbursing cash or processing credit/debit card transactions. These rules will set forth the procedures for conducting criminal history record information searches, disqualification and appeal rights.

Reasons Supporting Proposal: To comply with RCW 79A.05.030(10), created by HB 1313 (chapter 373, Laws of 2005), which provides that the Washington state parks and recreation commission shall: "Adopt rules establishing the requirements for a criminal history record information search for the following: Job applicants, volunteers, and independent contractors who have unsupervised access to children or vulnerable adults, or who will be responsible for collecting or disbursing cash or processing credit/debit card transactions. These background checks will be done through the Washington state patrol criminal identification section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. A permanent employee of the commission, employed as of July 24, 2005, is exempt from the provisions of this subsection."

Statutory Authority for Adoption: RCW 79A.05.070.

Statute Being Implemented: RCW 79A.05.030(1).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Pamela McConkey, State Park Headquarters, P.O. Box 42650, Tumwater, WA 98504-2650, (360) 902-8595; and Enforcement: Phil Shave, State Park Headquarters, P.O. Box 42650, Tumwater, WA 98504-2650, (360) 902-8606.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This chapter of administrative rule does not regulate or have economic impact through regulations on small business. There are no compliance costs to small business as a result of the modifications to these rules.

A cost-benefit analysis is not required under RCW 34.05.328. Significant legislative rule-making requirements are not imposed on the state parks and recreation commission, nor has the commission voluntarily applied those requirements.

October 1, 2007

Jim French

Administrator of Statewide

Recreation Programs

## Chapter 352-18 WAC

### BACKGROUND CHECKS FOR JOB APPLICANTS, VOLUNTEERS AND INDEPENDENT CONTRACTORS

#### NEW SECTION

**WAC 352-18-010 What definitions apply to this chapter?** The following definitions apply:

"**Child**" means an individual that has not reached the age of sixteen.

"**Criminal background check**" means a criminal history record information search that may include but is not limited to, the following:

(a) A record check of arrests and convictions through the Washington state patrol;

(b) Fingerprints processed through the FBI to obtain a complete criminal history.

"**Independent contractor**" means any independent for-profit or nonprofit private person or organization with which the commission has or is considering a contractual relationship. In the case of large organizations, the contractor background to be reviewed is that of the organization's principal on-site manager.

"**Unsupervised access**" means that an individual will or may be left alone with a child or vulnerable adult at any time or any length of time.

"**Volunteer**" means a person who is willing to work without expectation of salary or financial reward.

"**Vulnerable adult**" means adults of any age who lack the functional, mental, or physical ability to care for themselves. As defined in chapter 74.34 RCW "vulnerable adult" includes a person: Found incapacitated under chapter 11.88 RCW; or who has a developmental disability as defined under RCW 71A.10.020; or admitted to any facility; or receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or receiving services from an individual provider.

#### NEW SECTION

**WAC 352-18-020 Who may be subject to criminal background checks?** The Washington state parks and recreation commission requires criminal background checks on job applicants, volunteers, and independent contractors who:

(1) Have unsupervised access to children or vulnerable adults; and

(2) Persons who will be responsible for collecting or disbursing cash or processing credit/debit card transactions.

#### NEW SECTION

**WAC 352-18-021 Will a criminal conviction prohibit me from working, volunteering, or contracting with Washington state parks?** (1) Conviction of a crime will not automatically preclude a person from working, volunteering, or contracting with Washington state parks. The nature of the conviction and any extenuating or mitigating circumstances will be considered.

(2) Convictions for certain crimes may prohibit you from working, volunteering, or contracting with Washington state parks. Those convictions include but are not limited to:

(a) A crime against another person;

(b) A crime against a child (including child pornography);

(c) Child abuse and/or neglect;

(d) Spousal abuse;

(e) Animal cruelty crimes;

(f) A crime relating to the possession, sale, distribution, manufacture or use of an illegal drug;

(g) Indecent exposure;

(h) Fraud or false pretenses in obtaining something of value;

(i) Larceny or a misdemeanor theft by taking;

- (j) Soliciting for prostitutes;
  - (k) Pattern of failure to file federal tax returns in years in which taxes are due;
  - (l) Criminal issuance of a bad check;
  - (m) Make a false report of a crime.
- (3) Washington state parks may consider the following mitigating factors:
- (a) The seriousness of the crime that led to the conviction;
  - (b) The number and types of other convictions in your background;
  - (c) Your age at the time of conviction;
  - (d) The amount of time that has passed since your conviction; and
  - (e) Documentation indicating that you have successfully completed all court-ordered programs and restitution.

NEW SECTION

**WAC 352-18-022 To whom is the criminal background check information released?** (1) Washington state parks will only share pass/fail results of the criminal background check with the supervisor(s) except as provided by chapters 42.17 and 10.97 RCW.

(2) Washington state parks will follow laws related to the release of criminal history records (chapter 10.97 RCW and RCW 43.43.570) and public disclosure (chapter 42.17 RCW) when releasing any information.

NEW SECTION

**WAC 352-18-023 How will I know if I have been disqualified by the criminal background check?** Job applicants, volunteers, and independent contractors who fail to pass a background check will be notified in writing by Washington state parks that they did not pass the criminal background check.

NEW SECTION

**WAC 352-18-024 What do I do if I disagree with the results of the criminal background check?** (1) Job applicants, volunteers, and independent contractors who do not pass the criminal background check are entitled to challenge the accuracy and completeness of any information contained in their background check. Contact may be made with Washington state parks human resources or the volunteer programs to review the information.

(2) Disqualified individuals may provide, in writing, justification/explanation with supporting documentation to the state parks director requesting further consideration at 7150 Cleanwater Drive, P.O. Box 42650, Olympia, WA 98504.

NEW SECTION

**WAC 352-18-030 What happens if I do not comply with the criminal background check or make false statements in my application?** (1) Washington state parks will not hire, continue to employ, allow volunteering or contracting with individuals who do not consent to a criminal background check or refuse to be fingerprinted.

(2) Washington state parks will not hire, continue to employ, allow volunteering, or contracting with individuals who make false statements orally or in writing regarding the criminal background check.

(3) Any person making false statements regarding their criminal background check may be denied employment or their employment terminated.

(4) Any person refusing a criminal background check may be refused employment.

**WSR 07-20-083****WITHDRAWAL OF PROPOSED RULES  
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed October 2, 2007, 8:43 a.m.]

WAC 230-20-685, proposed by the gambling commission in WSR 07-07-040 appearing in issue 07-07 of the State Register, which was distributed on April 4, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 07-20-084****WITHDRAWAL OF PROPOSED RULES  
HORSE RACING COMMISSION**

(By the Code Reviser's Office)

[Filed October 2, 2007, 8:43 a.m.]

WAC 260-20-160, proposed by the horse racing commission in WSR 07-07-047 appearing in issue 07-07 of the State Register, which was distributed on April 4, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 07-20-085****WITHDRAWAL OF PROPOSED RULES  
HORSE RACING COMMISSION**

(By the Code Reviser's Office)

[Filed October 2, 2007, 8:43 a.m.]

WAC 260-12-065, proposed by the horse racing commission in WSR 07-07-100 appearing in issue 07-07 of the State Register, which was distributed on April 4, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 07-20-086**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed October 2, 2007, 8:44 a.m.]

WAC 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-520, 388-532-530, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-745, 388-532-750, 388-532-760, 388-532-780 and 388-532-790, proposed by the department of social and health services in WSR 07-07-102 appearing in issue 07-07 of the State Register, which was distributed on April 4, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 07-20-090**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**

[Filed October 2, 2007, 10:13 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-34-100 How often are general government employees required to complete sexual harassment awareness and prevention training?, 357-34-105 How often are general government managers and supervisors required to complete additional sexual harassment training?, 357-34-110 Under what circumstances may the general government employer waive the required sexual harassment awareness and prevention training for a new employee?, 357-34-115 What must be included in the required sexual harassment awareness and prevention training?, 357-34-120 Who provides the required sexual harassment awareness and prevention training?, 357-34-125 How do general government employers report their compliance with WAC 357-34-100 to the department?, 357-25-025 What are the policy statement requirements that employers must comply with for the purpose of chapter 357-25 WAC?, and 357-25-027 What must be included in the general government employer's sexual harassment policy?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on November 8, 2007, at 8:30 a.m.

Date of Intended Adoption: November 8, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by November 1, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by November 1, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 5118 passed during the 2007 legislative session which requires department of personnel to adopt rules establishing guidelines for policies, procedures, and mandatory training programs on sexual harassment for state employees and establishes reporting requirements for agencies on compliance of rules.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of Personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

October 1, 2007

Eva N. Santos

Director

NEW SECTION

**WAC 357-34-100 How often are general government employees required to complete sexual harassment awareness and prevention training?** Employees of agencies defined in RCW 41.06.020 are required to complete sexual harassment awareness and prevention training at least every five years. For new employees sexual harassment awareness and prevention training should be completed within the first six months of employment, or earlier if required by the employer's sexual harassment policy.

NEW SECTION

**WAC 357-34-105 How often are general government managers and supervisors required to complete additional sexual harassment training?** Effective July 1, 2008, in addition to the training described in WAC 357-34-100, all managers and supervisors of agencies defined in RCW 41.06.020 are required to complete training on managers' roles and responsibilities regarding sexual harassment every three years. For new supervisors and managers, training on roles and responsibilities should be completed within the first six months of becoming a manager or supervisor.

NEW SECTION

**WAC 357-34-110 Under what circumstances may the general government employer waive the required sexual harassment awareness and prevention training for a new employee?** Agencies as defined in RCW 41.06.020 may waive the sexual harassment awareness and prevention training or the managers' roles and responsibilities training required for a new employee if the employee can show proof



of attending training given by another state agency, within the time frame that satisfies the requirements of this chapter.

If the sexual harassment awareness and prevention training is waived for a new employee the agency must review their sexual harassment policy with the new employee. The employee must take the next training within five years of completion of the sexual harassment awareness and prevention training or within three years of completion of the managers' roles and responsibilities training with their former state agency.

#### NEW SECTION

**WAC 357-34-115 What must be included in the required sexual harassment awareness and prevention training?** The requirements of the sexual harassment awareness and prevention training will be published by the department. All training must satisfy the requirements by July 1, 2008.

#### NEW SECTION

**WAC 357-34-120 Who provides the required sexual harassment awareness and prevention training?** Either the department or the agency may provide the sexual harassment awareness and prevention training.

#### NEW SECTION

**WAC 357-34-125 How do agencies report their compliance with WAC 357-34-100 to the department?** Agencies as defined in RCW 41.06.020 must report to the department at least every two years regarding their compliance with WAC 357-34-100 and 357-34-105. These agencies must submit a statement signed by the agency head indicating the percentage of employees who are current in the required sexual harassment awareness and prevention training and the percentage of managers and supervisors who are current in the required roles and responsibilities training. Agencies will submit their statements as follows:

- (1) Agencies with 50 or more full time equivalent employees must submit their statement to the department with the employer's affirmative action plan and affirmative action plan update.
- (2) Agencies with 25 to 49 full time equivalent employees must submit their statement to the department with their small agency workforce profile.
- (3) Agencies with fewer than 25 full time equivalent employees must submit their statement to the department with the agency's sexual harassment policy.

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

**WAC 357-25-025 What are the policy statement requirements that employers must comply with for the purpose of chapter 357-25 WAC?** (1) All employers must maintain:

- (a) An affirmative action and equal employment opportunity policy statement; and

(b) Policy statements on sexual harassment and reasonable accommodation.

(2) The employer's affirmative action and equal employment opportunity policy statement must be reviewed and approved by the head of the agency, institution, or related higher education board each year. The policy statements on sexual harassment and reasonable accommodation must be updated as needed.

(3) Agencies as defined in RCW 41.06.020 must submit their sexual harassment policy as follows:

(a) Agencies with 50 or more full time equivalent employees must submit their policy to the department with the employer's affirmative action plan and affirmative action plan update.

(b) Agencies with 25 to 49 full time equivalent employees must submit their policy to the department with their small agency workforce profile.

(c) Agencies with fewer than 25 full time equivalent employees must submit their policy to the department at least every two years.

#### NEW SECTION

**WAC 357-25-027 What must be included in the agency's sexual harassment policy?** Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

- (1) Indicate who is covered by the policy;
- (2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;
- (3) State that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;
- (4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;
- (5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.
- (6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;
- (7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;
- (8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;
- (9) State that the complainant shall be informed of the status and the outcome of an investigation.
- (10) Identify the agency's investigation or response procedure;
- (11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:
  - (a) Preventing or not engaging in sexual harassment;

- (b) Responding to concerns or allegations of violations of the policy;
  - (c) Participation in an investigation under the policy; and
  - (d) The prohibition against retaliation.
- (12) State that confidentiality cannot be guaranteed;
- (13) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;
- (14) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal; and
- (15) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal.

**WSR 07-20-091****PROPOSED RULES****DEPARTMENT OF PERSONNEL**

[Filed October 2, 2007, 10:14 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-16-025 How must employers and the department inform prospective applicants of recruitments?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on November 8, 2007, at 8:30 a.m.

Date of Intended Adoption: November 8, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694 by November 1, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by November 1, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this amendment is to clarify the language in WAC 357-16-025. The current language gives the impression that job seekers do not have to apply for specific positions. To be an applicant a job seeker must express interest in the job. The proposed modification repeals the language that causes this confusion and provides individual employers the ability to determine how recruitments will be announced.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of Personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

October 1, 2007

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 06-19-065, filed 9/19/06, effective 10/20/06)

**WAC 357-16-025 How must employers and the department inform prospective applicants of recruitments?** (~~Employers and the department may recruit without notice by searching for job seekers who have registered in the talent pool maintained by the department. If the department or employer does not recruit job seekers from the central talent pool, notice of recruitment must be issued publicly. The notice must specify the period of recruitment.~~) Employers shall determine the appropriate method to solicit job seekers, which may include but not be limited to, public announcements; searching the state central talent pool; or, using an employer maintained talent pool. Recruitment announcements shall inform prospective job seekers how to apply for, or express interest in, positions which may come open for recruitment.

**WSR 07-20-092****PROPOSED RULES****DEPARTMENT OF PERSONNEL**

[Filed October 2, 2007, 10:15 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-58-475 Does a veteran receive any preference in layoff?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on November 8, 2007, at 8:30 a.m.

Date of Intended Adoption: November 8, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694, by November 1, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by November 1, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment will eliminate confusion in how seniority preference is defined in Washington general service (WGS) rules and Washington management service (WMS) rules. The current WGS rule says "surviving spouse" and the current WMS rule says "unmarried widow/widower." This change will correct the discrepancy.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

October 1, 2007

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-475 Does a veteran receive any preference in layoff?** (1) An eligible veteran receives a preference by having his/her seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five years, to his/her unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The ~~((unmarried widow/widower))~~ surviving spouse of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

### WSR 07-20-093

#### PROPOSED RULES

#### DEPARTMENT OF PERSONNEL

[Filed October 2, 2007, 10:33 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-07-065 How is the department of personnel organized?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on November 8, 2007, at 8:30 a.m.

Date of Intended Adoption: November 8, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail [connieg@dop.wa.gov](mailto:connieg@dop.wa.gov), fax (360) 586-4694 by November 1, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of Personnel by November 1, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this amendment is to update the names and descriptions of the divisions within the department of personnel.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of Personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

October 1, 2007

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 06-19-064, filed 9/19/06, effective 10/20/06)

**WAC 357-07-065 How is the department of personnel organized?** The staff is organized in six general areas:

(1) Personnel services: Provides consultation and services related to recruitment, assessment, affirmative action, human resources, salary surveys, compensation plan administration, and classification to state agencies, institutions of higher education, and related higher education boards.

(2) Organization and employee development services (located at 600 South Franklin Street, Olympia, Washington): ~~((Provides consultation on human resource development activities to agencies, training which is interagency in scope, and guidelines for agency planning and evaluation of human resource development.))~~ Provides organizational, management, and employee development services to all state agencies.

(3) Administrative services: Provides support services for facilities and supplies, financial services including payroll and travel, duplicating and mailroom services, combined fund drive, forms and records management, administration of agency and statewide master contracts, and administers the statewide employee survey. Within the administrative divi-

sion, the employee (~~(advisory service (EAS))~~) assistance program (EAP) helps with personal or work related problems affecting work performance. EAP offices are at the following locations: (~~(3400 Capitol Boulevard,))~~ 1222 State Ave NE, Suite 201, Olympia, Washington; (~~(613—19th Avenue E., Suite 101,))~~ 701 Dexter Ave. N, #108, Seattle, Washington; and at Suite 604, Northtown Office Building, Spokane, Washington.

(4) Legal affairs: Provides affirmative action consultation, rule interpretation, labor/employment discrimination guidance, legislative services and responds to requests for public records. Provides director's review and appeal services (located at 2828 Capitol Blvd., Olympia, Washington), processes and adjudicates requests for director's reviews and provides administrative support for personnel resources board appeals.

(5) Director's office: Provides agency leadership, internal human resources, planning and performance, communication services, and operational support.

(6) (~~(Human resources i))~~ Information services (located at Building #1, Rowsix, 4424 6th Avenue, Lacey, Washington): ((Administers the central personnel/payroll and insurance eligibility computer systems.)) Administers all central statewide technology systems supporting human resources activities.

### WSR 07-20-099

#### PROPOSED RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 2, 2007, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-080.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, 2nd Floor Conference Room, 600 South Washington Street, Olympia, WA 98504, on November 9, 2007, at 9:00.

Date of Intended Adoption: November 10, 2007.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by November 8, 2007.

Assistance for Persons with Disabilities: Contact Penny Coker by October 10, 2007, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revision is required to clarify to school districts the reporting requirements of the annual school bus mileage report.

Statutory Authority for Adoption: RCW 28A.150.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Martin Mueller, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

October 1, 2007

Dr. Terry Bergeson  
State Superintendent

AMENDATORY SECTION (Amending WSR 07-03-072, filed 1/17/07, effective 2/17/07)

**WAC 392-141-160 District reporting and record-keeping requirements.** Annual or supplementary reports shall be submitted by each school district to the superintendent of public instruction prior to the last business day in October. This report shall reflect to the extent practical the planned pupil transportation program for the entire school year and which is in operation during ridership count week. Reports shall be submitted with a cover letter signed by the chief school district administrator attesting to the completeness of the requirements below and the accuracy of the data contained therein. The superintendent of public instruction shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150, 28A.160.160, and 28A.160.170. Each district shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations. These reports shall be maintained for a period of three school years or until audited and include the following but are not limited to:

(1) School bus route logs completed in ink by bus drivers for five consecutive days. These logs shall include state school bus numbers, each bus stop, the number of students boarding the bus at each stop, and destination schools, transfer points, learning centers, or agencies; and

(2) The number of kindergarten through fifth grade students enrolled during ridership count week and living one radius mile or less from their destination school; and

(3) Other operational data and descriptions, as required by the superintendent of public instruction to determine operation allocation requirements for each district; and

(4) An annual school bus mileage report including (~~(the beginning and ending year odometer reading.))~~ the total to and from school bus miles ((for each bus)) for the previous school year, an estimate of to and from school bus mileage for the ((upcoming)) current school year, and total school bus miles for ((extended day routes.)) field trips, extracurricular, and other ((contractual uses of school buses)) categories as requested; and

(5) Copies of any and all correspondence, publications, news articles, or campaign materials which encourage ridership during count week of the report that is beyond the normal activity experienced during the school year. School dis-

tricts shall not utilize incentive programs that provide tangible gifts to reward increases in ridership counts.

School districts shall maintain at least a weekly one-day route log containing the school bus driver's name, state bus number, route number, route type, day of the week, beginning and ending odometer readings, destinations, destination times and student counts. These route logs shall be maintained in the school district files for a period of three years or until audited.

**WSR 07-20-104**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed October 2, 2007, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-082.

Title of Rule and Other Identifying Information: WAC 181-78A-270 Approval standard—Knowledge and skills.

Hearing Location(s): Radisson Hotel Gateway SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on November 7, 2007, at 8:30 a.m.

Date of Intended Adoption: November 7, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by November 1, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by November 1, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The professional educator standards board adopted a new evidence-based Standard V for teacher preparation programs. The proposed WAC language replaces the old Standard V with the newly adopted Standard V.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236,

Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

October 2, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-78A-270 Approval standard—Knowledge and skills.** Building on the mission to prepare educators who demonstrate a positive impact on student learning based on the Improvement of Student Achievement Act of 1993 (1209), the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(5):

(1) **TEACHER.** ~~((Teacher candidates will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:~~

**Foundational knowledge**

(a) The state learning goals and essential academic learning requirements.

(b) The subject matter content for the area(s) they teach, including relevant methods course work and the knowledge and skills for each endorsement area for which the candidate is applying (chapter 181-82 WAC).

(c) The social, historical, and philosophical foundations of education, including an understanding of the moral, social, and political dimensions of classrooms, teaching, and schools.

(d) The impact of technological and societal changes on schools.

(e) Theories of human development and learning.

(f) Inquiry and research.

(g) School law and educational policy, including laws pertaining to school health and safety.

(h) Professional ethics.

(i) The responsibilities, structure, and activities of the profession.

(j) Issues related to abuse including the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are the victims of abuse, and methods for teaching students about abuse of all types and their prevention.

(k) The standards, criteria and other requirements for obtaining the professional certificate, including a draft professional growth plan.

**Effective teaching**

(l) Research and experience-based principles of effective practice for encouraging the intellectual, social, and personal development of students.

(m) Different student approaches to learning for creating instructional opportunities adapted to learners of both sexes and from diverse cultural or linguistic backgrounds.

(n) Areas of exceptionality and learning—including, but not limited to, learning disabilities, visual and perceptual difficulties, and special physical or mental challenges.

(o) ~~Effective instructional strategies for students at all levels of academic abilities and talents with an awareness of the influence of culture and gender on student learning.~~

(p) ~~Instructional strategies for developing reading, writing, critical thinking, and problem solving skills.~~

(q) ~~The prevention and diagnosis of reading difficulties and research-based intervention strategies.~~

(r) ~~Classroom management and discipline, including:~~

(i) ~~Individual and group motivation for encouraging positive social interaction, active engagement in learning, and self-motivation.~~

(ii) ~~Effective verbal, nonverbal, and media communication for fostering active inquiry, collaboration, and supportive interactions in the classroom.~~

(s) ~~Planning and management of instruction based on knowledge of the content area, the community, and curriculum goals.~~

(t) ~~Formal and informal assessment strategies for evaluating and ensuring the continuous intellectual, social, and physical development of the learner.~~

(u) ~~Collaboration with school colleagues, parents, and agencies in the larger community for supporting students' learning and well-being.~~

(v) ~~Effective interactions with parents to support students' learning and well-being.~~

#### **Professional development**

(w) ~~The opportunity for candidates to reflect on their teaching and its effects on student growth and learning.~~

(x) ~~Educational technology including the use of computer and other technologies in instruction, assessment and professional productivity.~~

(y) ~~Strategies for effective participation in group decision making.)~~

#### **Knowledge of subject matter and curriculum goals**

(a) Teacher candidates positively impact student learning that is:

(i) **Content driven.** All students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology.

(ii) **Aligned with curriculum standards and outcomes.** All students know the learning targets and their progress toward meeting them.

(iii) **Integrated across content areas.** All students learn subject matter content that integrates mathematical, scientific, and aesthetic reasoning.

#### **Knowledge of teaching**

(b) Teacher candidates positively impact student learning that is:

(i) **Informed by standards-based assessment.** All students benefit from learning that is systematically analyzed using multiple formative, summative, and self-assessment strategies.

(ii) **Intentionally planned.** All students benefit from standards-based planning that is personalized.

(iii) **Influenced by multiple instructional strategies.** All students benefit from personalized instruction that addresses their ability levels and cultural and linguistic backgrounds.

(iv) **Informed by technology.** All students benefit from instruction that utilizes effective technologies and is designed to create technologically proficient learners.

#### **Knowledge of learners and their development in social contexts**

(c) Evidence of teacher candidate practice reflects planning, instruction and communication that is:

(i) **Learner centered.** All students engage in a variety of culturally responsive, developmentally, and age appropriate strategies.

(ii) **Classroom/school centered.** Student learning is connected to communities within the classroom and the school, including knowledge and skills for working with others.

(iii) **Family/neighborhood centered.** Student learning is informed by collaboration with families and neighborhoods.

(iv) **Contextual community centered.** All students are prepared to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society.

#### **Understanding teaching as a profession**

(d) Teacher candidates positively impact student learning that is:

(i) **Informed by professional responsibilities and policies.** All students benefit from a collegial and professional school setting.

(ii) **Enhanced by a reflective, collaborative, professional growth-centered practice.** All students benefit from the professional growth of their teachers.

(iii) **Informed by legal and ethical responsibilities.** All students benefit from a safe and respectful learning environment.

#### **(2) PRINCIPAL AND PROGRAM ADMINISTRATOR.**

(a) Effective August 31, 1997, through August 31, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program which shall include:

(i) Specific performance domains. An approved preparation program shall require the candidate to demonstrate in course work and the internship the following:

(A) **Leadership:** Formulating goals with individuals or groups; initiating and maintaining direction with groups and guiding them to the accomplishment of tasks; setting priorities for one's school in the context of community and district priorities and student and staff needs; integrating own and others' ideas for task accomplishment; initiating and planning organizational change.

(B) **Information collection:** Gathering data, facts, and impressions from a variety of sources about students, parents, staff members, administrators, and community members; seeking knowledge about policies, rules, laws, precedents, or practices; managing the data flow; classifying and organizing information for use in decision making and monitoring.

(C) **Problem analysis:** Identifying the important elements of a problem situation by analyzing relevant information; framing problems; identifying possible causes; identifying additional needed information; framing and reframing

possible solutions; exhibiting conceptual flexibility; assisting others to form reasoned opinions about problems and issues.

(D) **Judgment:** Reaching logical conclusions and making high quality, timely decisions given the best available information.

(E) **Organizational oversight:** Planning and scheduling one's own and others' work so that resources are used appropriately, and short-term and long-term priorities and goals are met; monitoring projects to meet deadlines.

(F) **Implementation:** Making things happen; putting programs and plans into action; applying management technologies; applying methods of organizational change including collaborative processes; facilitating tasks; establishing progress checkpoints; considering alternative approaches; providing "mid-course" corrections when actual outcomes start to diverge from intended outcomes; adapting to new conditions.

(G) **Delegation:** Assigning projects or tasks together with clear authority to accomplish them and responsibility for their timely and acceptable completion.

(H) **Instructional program:** Envisioning and enabling instructional and auxiliary programs for the improvement of teaching and learning; recognizing the developmental needs of students; insuring appropriate instructional methods that address students' gender and cultural differences; designing positive learning experiences; accommodating differences in cognition and achievement; mobilizing the participation of appropriate people or groups to develop these programs and to establish a positive learning environment.

(I) **Curriculum design:** Interpreting school district curricula; planning and implementing with staff a framework for instruction that shall include the implementation of the state learning goals and essential academic learning requirements; initiating needs analyses and monitoring social and technological developments as they affect curriculum; responding to international content levels; adjusting content as needs and conditions change.

(J) **Student guidance and development:** Providing for student guidance, counseling, and auxiliary services; utilizing community organizations; responding to family needs; enlisting the participation of appropriate people and groups to design and conduct these programs and to connect schooling with plans for adult life; planning for a comprehensive program of student activities.

(K) **Staff development:** Identifying with participants the professional needs of individuals and groups; planning and organizing programs to improve staff effectiveness; supervising individuals and groups; engaging staff and others to plan and participate in recruitment and development; initiating self-development.

(L) **Measurement and evaluation:** Determining what diagnostic information is needed about students, staff, and the school environment; examining the extent to which outcomes meet or exceed previously defined standards, goals, or priorities for individuals or groups; drawing inferences for program revisions; interpreting measurements or evaluations for others; relating programs to desired outcomes; developing equivalent measures of competence.

(M) **Resource allocation:** Planning and developing the budget with appropriate staff; seeking, allocating, and adjust-

ing fiscal, human, and material resources; utilizing the physical plant; monitoring resource use and reporting results.

(N) **Motivating others:** Building commitment to a course of action; creating and channeling the energy of self and others; planning and encouraging participation; supporting innovation; recognizing and rewarding effective performance; providing coaching, guidance, or correction for performance that needs improvement; serving as a role model.

(O) **Sensitivity:** Perceiving the needs and concerns of others; dealing with others tactfully; working with others in emotionally stressful situations or in conflict; managing conflict; obtaining feedback; recognizing multicultural sensibilities.

(P) **Oral expression:** Making oral presentations that are clear and easy to understand; clarifying and restating questions; responding, reviewing, and summarizing for groups; utilizing appropriate communicative aids; adapting for audiences.

(Q) **Written expression:** Expressing ideas clearly in writing; writing appropriately for different audiences such as students, teachers, and parents; preparing brief memoranda.

(R) **Philosophical and cultural values:** Acting with a reasoned understanding of the role of education in a democratic society and in accord with accepted ethical standards; recognizing philosophical and historical influences in education; reflecting an understanding of American culture, including current social and economic issues related to education; recognizing global influences on students and society.

(S) **Legal and regulatory applications:** Acting in accordance with relevant federal and Washington state laws, rules, and policies; recognizing governmental influences on education; working within local rules, procedures, and directives; administering contracts.

(T) **Policy and political influences:** Identifying relationships between public policy and education; recognizing policy issues; examining and affecting policies individually and through professional and public groups; relating policy initiatives to the welfare of students; addressing ethical issues.

(U) **Public and media relationships:** Developing common perceptions about school issues; interacting with parental and community opinion leaders; understanding and responding skillfully to the electronic and printed news media; initiating and reporting news through appropriate channels; enlisting public participation; recognizing and providing for market segments.

(ii) Performance assessment. An approved preparation program for principals shall require that prior to the internship each candidate shall engage in a performance assessment through a process determined by each preparation program. The results of this assessment shall be utilized by the college/university supervisor, the cooperating principal, and the principal candidate to cooperatively design the internship plan.

(b) Effective September 1, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(i) Successful demonstration of standards. A school administrator is an educational leader who promotes the success of all students by:

(A) Facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(B) Advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(C) Ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(D) Collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(E) Acting with integrity, fairness, and in an ethical manner; and

(F) Understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.

(ii) Performance assessment. An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(3) **SUPERINTENDENT.** Superintendent candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program for superintendents which shall include specific performance domains for superintendents. An approved preparation program for superintendents shall require the candidate to demonstrate in course work and the internship the following:

(a) **Strategic leadership:** The knowledge, skills and attributes to identify contexts, develop with others vision and purpose, utilize information, frame problems, exercise leadership processes to achieve common goals, and act ethically for educational communities. This includes:

(i) Professional and ethical leadership.

(ii) Information management and evaluation.

(b) **Instructional leadership:** The knowledge, skills and attributes to design with others appropriate curricula and instructional programs which implement the state learning goals and essential academic learning requirements, to develop learner centered school cultures, to assess outcomes, to provide student personnel services, and to plan with faculty professional development activities aimed at improving instruction. This includes:

(i) Curriculum, instruction, supervision, and learning environment.

(ii) Professional development and human resources.

(iii) Student personnel services.

(c) **Organizational leadership:** The knowledge, skills and attributes to understand and improve the organization, implement operational plans, manage financial resources,

and apply decentralized management processes and procedures. This includes:

(i) Organizational management.

(ii) Interpersonal relationships.

(iii) Financial management and resource allocation.

(iv) Technology and information system.

(d) **Political and community leadership:** The knowledge, skills and attributes to act in accordance with legal provisions and statutory requirements, to apply regulatory standards, to develop and apply appropriate policies, to be conscious of ethical implications of policy initiatives and political actions, to relate public policy initiatives to student welfare, to understand schools as political systems, to involve citizens and service agencies, and to develop effective staff communications and public relations programs. This includes:

(i) Community and media relations.

(ii) Federal and Washington state educational law, public policy and political systems.

(4) **SCHOOL COUNSELOR.** Effective August 31, 1997 through August 31, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Human growth and development (studies that provide an understanding of the nature and needs of individuals at all developmental levels).

(b) Social and cultural foundations (studies that provide an understanding of issues and trends in a multicultural and diverse society).

(c) Helping relationships (studies that provide an understanding of counseling and consultation processes).

(d) Group work (studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches).

(e) Career and lifestyle development (studies that provide an understanding of career development and related life factors).

(f) Appraisal (studies that provide an understanding of individual and group approaches to assessment and evaluation), including assessment of the state learning goals and essential academic learning requirements.

(g) Research and program evaluation (studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research).

(h) Professional orientation (studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing).

(i) Foundations of school counseling including:

(i) History, philosophy, and trends in school counseling;

(ii) Role and function of the school counselor in conjunction with the roles of the professional and support personnel in the school;

(iii) Knowledge of the school setting and curriculum including the state learning goals and essential academic learning requirements;



(iv) Ethical standards and guidelines of the American School Counselor Association (ASCA);

(v) State and federal policies, laws, and legislation relevant to school counseling; and

(vi) Implications of sociocultural, demographic, and lifestyle diversity relevant to school counseling.

(j) Studies that provide an understanding of the coordination of counseling program components as they relate to the total school community including:

(i) Referral of children and adolescents for specialized help;

(ii) Coordination efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives;

(iii) Methods of integration of guidance curriculum in the total school curriculum;

(iv) Promotion of the use of counseling and guidance activities and programs by the total school community to enhance a positive school climate; and

(v) Methods of planning and presenting guidance-related educational programs for school personnel and parents.

(k) Theory, knowledge and skills for the practice of school counseling including:

(i) Program development, implementation and evaluation. Studies in this area include:

(A) Use of surveys, interviews, and needs assessments;

(B) Design, implementation and evaluation of a comprehensive, developmental school program;

(C) Implementation and evaluation of specific strategies designed to meet program goals and objectives;

(D) Preparation of a counseling schedule reflecting appropriate time commitments and priorities in a developmental school counseling program; and

(E) Use of appropriate technology and information systems.

(ii) Counseling and guidance. Studies in this area include:

(A) Individual and group counseling and guidance approaches appropriate for the developmental stage and needs of children and adolescents;

(B) Group guidance approaches that are systematically designed to assist children and adolescents with developmental tasks;

(C) Approaches to peer helper programs;

(D) Issues which may affect the development and function of children and adolescents (e.g., abuse, eating disorders, attention deficit hyperactivity disorder, exceptionality, substance abuse, violence, suicide, dropout);

(E) Developmental approaches to assist students and parents at points of educational transition (e.g., postsecondary education, career and technical education, and career options);

(F) Crisis intervention and referral; and

(G) System dynamics, including family, school, community, etc.

(iii) Consultation. Studies in this area shall include:

(A) Methods of enhancing teamwork within the school community; and

(B) Methods of involving parents, teachers, administrators, support staff and community agency personnel.

(5) **SCHOOL COUNSELOR.** Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Foundations of the school counseling profession:** Certified school counselors design, deliver, and evaluate student-centered, data-driven school counseling programs that advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards.

(ii) **School counseling and student competencies:** Certified school counselors integrate academic, career, and personal/social student competencies, including Washington state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.

(iii) **Human growth and development:** Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learning, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate practices that support students throughout their schooling experience.

(iv) **Counseling theories and technique:** Certified school counselors demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population.

(v) **Equity, fairness, and diversity:** Certified school counselors value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students.

(vi) **School climate:** Certified school counselors establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

(viii) **Information resources and technology:** Certified school counselors select and use informational resources

and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

(ix) **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regularly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action research, and program evaluation for purposes of program improvement and accountability.

(x) **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor-skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan.

(xi) **Professionalism, ethics, and legal mandates:** Certified school counselors develop a professional identity congruent with knowledge of all aspects of professional functions, professional development, and state and national school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and federal policies, laws, and legislation relevant to school counseling.

(xii) **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situations; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed.

(b) **Performance assessment.** An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(6) **SCHOOL PSYCHOLOGIST.** Effective August 31, 1997, through August 31, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge of the field. The candidate has knowledge and skill in relevant fields of study, including:

- (i) Learning theory.
- (ii) Personality theory and development.
- (iii) Individual and group testing and assessment.
- (iv) Individual and group counseling and interviewing theory and techniques.
- (v) Basic statistics.
- (vi) Child development.
- (vii) Exceptional children.
- (viii) Social and cultural factors.
- (ix) Deviant personality.
- (x) Curriculum, including the state learning goals and essential academic learning requirements.
- (xi) Research design.
- (xii) Physiological and biological factors.

(b) Assessment and diagnosis. The candidate has knowledge and skill necessary to select, administer, score, and interpret instruments and techniques in the following areas:

- (i) Intellectual and cognitive assessment.
- (ii) Individual and group academic skills: Standardized norm-referenced and criteria-referenced measurements and curriculum-based measurements.
- (iii) Personality assessment.
- (iv) Assessment of perceptual skills.
- (v) Assessment of adaptive behavior; assessment of language skills.

(c) Behavioral observation and analysis. The candidate has knowledge and skill in behavior observation, including:

- (i) Data taking.
- (ii) Frequency measures.
- (iii) Qualitative and quantitative analysis of classroom behavior.

(iv) Developmental and personality analysis, including perceptual, cognitive, social, and affective and language development in children.

(d) Counseling and interviewing. The candidate has the knowledge and skill necessary to:

- (i) Provide individual and group counseling to students and parents.
- (ii) Conduct interviews essential to information collecting from parents, teachers, and other professionals.

(e) Program development. The candidate has the knowledge and skill to make educational prescriptions, including specification of remedial environmental changes, both curricular and behavioral, for a particular student.

(f) Consultation. The candidate has the knowledge and skill to:

- (i) Function on multidisciplinary teams in evaluating and placing students.
- (ii) Confer with and make recommendations to parents, specialists, teachers, referral personnel, and others relative to student's characteristics and needs in the educational and home environments.

(g) Program evaluation and recordkeeping. The candidate has the knowledge and skill necessary to develop and implement program evaluation and maintain required records.

(h) Professionalism. The candidate has knowledge of professional standards regarding ethical and legal practices

relevant to the practice of school psychology. The candidate demonstrates knowledge and skill in written and oral reporting of assessment and remedial recommendations which will meet ethical and legal standards.

(i) **Research.** The candidate has knowledge and skill to:

(i) Evaluate and perform research.

(ii) Apply school-oriented research.

(iii) Construct criterion-referenced instruments with reference to such educational decisions as:

(A) Retention in grade.

(B) Acceleration and early entrance.

(C) Early entrance.

(7) **School psychologist.** Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Data-based decision making and accountability:**

Certified school psychologists have knowledge of varied models and methods of assessment that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically based decisions about service delivery, evaluate the outcomes of services; and data-based decision making permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to particular situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Effective instruction and development of cognitive/academic skills:** Certified school psychologists have knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills; collaborate with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation.

(iv) **Socialization and development of life skills:** Certified school psychologists have knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills; collaborate with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling.

(v) **Student diversity in development and learning:**

Certified school psychologists have knowledge of individual differences, abilities, and disabilities and of the potential

influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(vii) **Prevention, crisis intervention, and mental health:** Certified school psychologists have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students.

(viii) **Home/school/community collaboration:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services.

(x) **School psychology practice and development:** Certified school psychologists have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards, including the Washington Administrative Code; practice in ways that are consistent with applicable standards, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development.

(xi) **Information technology:** Certified school psychologists have knowledge of information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services.

(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(8) **SCHOOL SOCIAL WORKER.** Effective August 31, 1997, through August 31, 2005, school social worker candi-

dates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge for social work practice. The candidate has knowledge and skills in relevant fields of study including:

(i) Values.

(A) Knowledge of profession including values, skills, and ethics; and

(B) National Association of Social Workers (NASW) Code of Ethics and school social work guidelines for practice.

(ii) Human behavior and the social environment.

(A) Community theory and community change (e.g., community organization and development, social planning, networking, and case management);

(B) Systems and organizational theory (e.g., school as a bureaucracy);

(C) Social disorganization (e.g., poverty, family and community violence, unemployment, addictions, multiple losses), and context of family in a changing society;

(D) Family dynamics and theories of family therapy;

(E) Human/child growth and development;

(F) Diverse populations of: Race, culture, social class, life style, age, gender and the disabled;

(G) Theories of personality; and

(H) Use of computer technology for social work practice.

(b) Service delivery and program development. The candidate will have knowledge and skills in the following activities:

(i) Direct practice.

(A) Referring, developing, and coordinating resources and services in the local education agency and community;

(B) Knowledge and skills related to families;

(C) Case management;

(D) Working with vulnerable and "hard to reach" individuals and families, including those from diverse populations;

(E) Crisis intervention, conflict resolution, stress management and decision-making skills;

(F) Individual and group counseling to improve students' self-knowledge and interactional skills for personal empowerment;

(G) Interviewing and counseling students in relation to social-personal problems adjudged to be impairing student's ability to learn;

(H) Family interventions including parent education; referral to resources; family counseling;

(I) Teaching children communication and interpersonal relationship skills through individual/group/classroom interventions;

(J) Collaborating and consulting with parents and community to assure readiness to learn for all students;

(K) Multidimensional assessment of student's social-emotional adjustment, adaptive behaviors, individual strengths, and environmental assets;

(L) Intervention case planning processes; and

(M) Career and academic guidance to students in their school to work transitions.

(ii) Indirect practice.

(A) Liaison and facilitator between and among home, school and community;

(B) Collaborate and consult with other educational staff to assure student progress;

(C) Use computer technology for practice and efficiency;

(D) Develop strategies for increased parental and community involvement with the school;

(E) Develop programs of remediation for students and their families;

(F) Design, coordinate and facilitate programs such as suicide prevention, truancy and drop-out prevention, and prevention of teenage pregnancy;

(G) Provide staff development programs;

(H) Work collaboratively with educational staff to develop programs to address school-community identified needs; and

(I) Function as change agents.

(c) Research and evaluation. The candidate will have necessary skills and knowledge to:

(i) Collect and interpret data in order to evaluate student, school, and community needs;

(ii) Evaluate own practice;

(iii) Become consumer of research findings;

(iv) Understand use of program evaluation methods; and

(v) Utilize computer technology for research and evaluation.

(d) Context for educational system. The candidate will have necessary knowledge and skills to apply the following:

(i) State learning goals and essential academic learning requirements;

(ii) Theories of learning;

(iii) School law and professional ethics;

(iv) Computer technology in the workplace; and

(v) Understanding of policies, laws, and procedures.

(9) **School social workers.** Effective September 1, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Core concepts and professional practice foundations:** The certified school social worker understands and applies the core concepts, tools of inquiry, theories, and skills and values of the general field of social work to the educational system; relates these core concepts to the Washington state learning goals, essential academic learning requirement (EALRS), Revised Code of Washington (RCW), Washington Administrative Code (WAC) and the Individuals With Disabilities Education Act (IDEA); and utilizes these constructs to facilitate the educational, social and emotional development of students by working towards reducing the impact of nonacademic barriers to academic success.

(ii) **Planning, ecological assessment and evaluation:** The certified school social worker understands and knows how to apply various formal and informal assessment tools to

identify student, family, school and community needs using a strengths and systems perspective; engage students (individually or in groups), families, school staff and/or the larger community in designing interventions and developing programs, which bolsters the strengths and meets the needs identified; uses best practices in evaluation criteria to monitor the success of the intervention; revisions to the intervention plan are based on systematic data collection; and to utilize the principles of research design and program evaluation to improve student learning outcomes.

(iii) **Prevention/intervention services:** The certified school social worker has knowledge of and ability to provide prevention education and skill building in such areas as violence, mediation, bullying, substance misuse and abuse, conflict resolution/management, and stress management; provide direct intervention services to students through crisis management, case management, counseling, skill building, behavior management, teaching of psycho-educational curriculums, personal development skills and classroom presentations; and provide both prevention and intervention services to students individually, in small group or classroom settings as well as with students' families.

(iv) **Home, school and community consultation and collaboration:** The certified school social worker understands and has the ability to develop consultative and collaborative relationships both individually and on a systemic level with students, colleagues, families and the community to support students' learning and social/emotional development; assist students and their families in networking with various social support systems in order to benefit student learning; and use their extensive knowledge of community resources to appropriately refer students and families to various community services.

(v) **Advocacy and facilitation:** The certified school social worker understands and has the ability to advocate and facilitate changes that empower students, families, educators and others to gain access to and effectively use school and community resources.

(vi) **Diversity and school climate:** The certified school social worker understands how a student's learning is influenced and impacted by culture, family dynamics, community values, individual learning styles, talents, gender, sexual orientation, language, prior learning, economics and disabilities; utilize this knowledge to design, implement and evaluate programs that enhance student learning and social interaction in school, family and community settings; and how to create and support a safe, nurturing and secure learning environment by designing and using strategies to prevent or resolve ecological barriers that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Professional development:** The certified school social worker understands and values the need for professional development and is able to use supervision, consultation, collaboration, continuing education and professional research to evaluate and enhance their practice.

(viii) **Information resources and technology:** The certified school social worker uses informational resources and technology to communicate, monitor student progress and evaluate programs; and access, appraise and utilize informa-

tion sources and technology in ways that safeguard and enhance their quality of services.

(ix) **Professional code of conduct and ethics:** The certified school social worker understands, maintains and applies the professional codes of conduct and ethical practice guidelines embodied in the National Association of Social Work (NASW) code of ethics and School Social Work standards developed for the field of education; and are familiar with district, state and federal laws and policies relevant to the educational setting.

(b) **Performance assessment.** An approved preparation program for school social workers shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

**WSR 07-20-105**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed October 2, 2007, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-116.

Title of Rule and Other Identifying Information: WAC 181-82A-204 Endorsement requirements.

Hearing Location(s): Radisson Hotel Gateway SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on November 7, 2007, at 8:30 a.m.

Date of Intended Adoption: November 7, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by November 1, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by November 1, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The professional educator standards board proposes the maintenance of the elementary endorsement, kindergarten through 8th grade. To strengthen content knowledge of the endorsement, the board proposes to require elementary ed candidates to pass the elementary WEST-E as well as one additional WEST-E in any content knowledge area, except traffic safety.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

October 2, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-82A-204 Endorsement requirements.** (1) Candidates completing endorsements required to obtain a residency certificate, shall complete college/university teacher preparation programs approved by the professional educator standards board pursuant to chapter 181-78A WAC, which include methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter. As per RCW 28A.410.220(2) candidates must pass a WEST-E assessment approved by the professional educator standards board for each certificate endorsement sought with the exception of elementary education for which two WEST-E assessments must be passed. The list of additional WEST-E assessments eligible for the elementary education endorsement are approved by the professional educator standards board and may not be changed without prior board approval.

(2) In order to add an additional endorsement, including a specialty endorsement, the candidate shall:

(a) ~~((Have completed))~~ Pass the means of assessing a candidate's knowledge in addition to completing a state-approved endorsement program which includes methodology (see WAC 181-78A-264(5)) and addresses all endorsement-specific competencies adopted by the professional educator standards board and published by the superintendent of public instruction. The requirement for field experience shall be at the discretion of the college/university. Provided, that in cases where programs require a field experience/internship, the colleges/universities should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's teaching schedule; or

(b) Achieve National Board certification in a Washington teaching endorsement area and hold a valid National Board certificate; or

(c) Pass the ~~((subject knowledge test))~~ means of assessing a candidate's knowledge approved by the professional educator standards board for the certificate endorsement being sought. The instructional methodology and content-related skills of the desired subject endorsement must be compatible with one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 1 endorsements adopted by the professional educator standards

board and published by the superintendent of public instruction. The applicant must document a minimum of ninety days teaching experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 1 endorsement; or

(d)(i) Pass the ~~((subject knowledge test))~~ means of assessing a candidate's knowledge approved by the professional educator standards board for the certificate endorsement being sought and successfully meet all eligibility criteria and process requirements for Pathway 2 endorsements as adopted by the professional educator standards board and published by the superintendent of public instruction. The desired subject endorsement must be identified as a Pathway 2 endorsement for one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 2 endorsements adopted by the professional educator standards board and published by the superintendent of public instruction.

(ii) Teacher preparation programs that offer Pathway 2 endorsement programs shall follow process steps as adopted by the professional educator standards board and published by the superintendent of public instruction to verify successful completion of the Pathway 2 process and to recommend adding the endorsement to the applicant's teacher certificate.

(3) Candidates from out-of-state shall be required to present verification that they completed a state-approved program (equivalent to a major) in a Washington endorsement area.

(4) Course work used to meet endorsement requirements must be completed through a regionally accredited college/university.

(5) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved endorsement program.

(6) Nothing within this chapter precludes a college or university from adopting additional requirements as conditions for recommendation, by such college or university, to the superintendent of public instruction for a particular subject area endorsement.

## WSR 07-20-106

### PROPOSED RULES

### PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed October 2, 2007, 3:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-083.

Title of Rule and Other Identifying Information: WAC 181-82A-207 Specialty endorsement program requirements.

Hearing Location(s): Radisson Hotel Gateway SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on November 7, 2007, at 8:30 a.m.

Date of Intended Adoption: November 7, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by November 1, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by November 1, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The professional educator standards board (PESB) proposes a specific process for seeking approval from the PESB for offering a specialty endorsement.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

October 2, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-20-063, filed 9/29/06, effective 10/30/06)

**WAC 181-82A-207 Specialty endorsement (~~program requirements~~) criteria.** (1) Specialty endorsements prepare a teacher (~~candidate~~) to work with a specific student population/~~demographic and/or subject matter area~~, and are created to help (~~candidates~~) teachers specialize beyond the required certificate endorsements as stated in WAC 181-82A-202. Specialty endorsements have unique endorsement competencies not found in any of the existing endorsements.

~~((1) Candidates completing specialty endorsements shall complete the following:~~

~~(a) Complete a college/university teacher specialty endorsement program approved by the professional educator standards board pursuant to chapter 181-78A WAC, which includes methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter; and~~

~~(b) Pass the subject knowledge test for the specialty endorsement approved by the professional educator standards board.~~

~~(2) Out-of-state candidates shall comply with WAC 181-79A-257.~~

~~(3) Course work used to meet specialty endorsement requirements must be completed through a regionally accredited college/university.~~

~~(4) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved specialty endorsement program.)~~

(2) Each college or university and/or Washington-based organization/association requesting the creation of a specialty endorsement shall seek a two phase approval by the professional educator standards board.

(a) Phase one: Proposers shall submit a preapproval proposal to the professional educator standards board that includes the following information:

(i) Documentation of nationally recognized teaching standards unique to the proposed specialty endorsement;

(ii) Letter of support from a professional educator standards board-approved college or university interested in offering the proposed specialty endorsement program.

(b) Phase two: If proposers receive preapproval from the professional educator standards board, they shall submit a phase two application available by the board. The phase two application, not to exceed ten pages, will address the following information:

(i) A description of the needs, student population and/or subject matter addressed by the proposed specialty endorsement;

(ii) A description of the unique knowledge and skills the proposed specialty endorsement provides to educators;

(iii) An explanation of the expected value and benefit of the proposed specialty endorsement for the K-12 system.

(c) Upon completion of both phases and board approval of a specialty endorsement, the process in WAC 181-82A-206 (2) through (4) shall apply.

## WSR 07-20-107

### PROPOSED RULES

### PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed October 2, 2007, 3:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-144.

Title of Rule and Other Identifying Information: WAC 181-79A-221 Academic and experience requirements for certification—School counselors, school psychologists, and school social workers.

Hearing Location(s): Radisson Hotel Gateway SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on November 7, 2007, at 8:30 a.m.

Date of Intended Adoption: November 7, 2007.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by November 1, 2007.

Assistance for Persons with Disabilities: Contact Nasue Nishida by November 1, 2007, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language clarifies the other types of exams acceptable for an educational staff associates residency certificate specific to school counselors, school psychologists and school social workers.

Statutory Authority for Adoption: RCW 28A.410.210 and RCW 28A.410.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

October 2, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-79A-221 Academic and experience requirements for certification—School counselors, school psychologists, and school social workers.** Candidates for school counselor, school psychologist and school social worker certification shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-226: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive written examination required in such master's degree program: Provided, That if any candidate has been awarded a master's degree without a comprehensive written examination, the candidate, as a condition for certification, shall arrange to take such an examination with any accredited college or university and provide the superintendent of public instruction with an affidavit from the chair of the department of such academic field that he or she has successfully completed the above noted comprehensive examination.

(1) School counselor.

(a) Initial.

(i) The candidate shall have completed all requirements for the master's degree (except special projects or thesis) with a major in counseling.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination of a regionally accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC).

(b) Residency.

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored, written examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the ~~((Praxis II guidance and counseling examination administered by Educational Testing Service (ETS)))~~ National Counselor Examination (NCE) or the National Certified School Counselor Examination (NCSCE) of the National Board of Certified Counselors (NBCC).

(c) Continuing.

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledges and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

(d) Professional. The candidate shall have completed an approved professional certificate program.

(2) School psychologist.

(a) Initial.

(i) The candidate shall have completed all requirements for the master's degree (except special projects or thesis) with a major or specialization in school psychology.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination from a regionally accredited institution of higher education or the National Certification of School Psychologist (NCSP) examination.

(b) Residency.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored, written examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on ~~((the Praxis II school psychology examination~~



~~administered by Educational Testing Service (ETS))) a national examination approved by the National Certification of School Psychologists (NCSP).~~

(c) Continuing.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledges and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

(d) Professional. The candidate shall have completed an approved professional certificate program.

(3) School social worker.

(a) Initial.

(i) The candidate shall have completed all requirements for a master's degree in social work except special projects or thesis.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination from a regionally accredited institution of higher education, the social worker examination of the Academy of Certified Social Workers or the National Teacher Examination—School Social Worker Specialty Area examination required for certification as a school social worker by the National Association of Social Workers.

(b) Residency.

(i) The candidate shall hold a master's degree in social work.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored, written examination of a regionally accredited institution of higher education or the candidate may meet the requirement by receiving a passing score on ~~((the Praxis II school social work examination administered by Educational Testing Service (ETS))) an examination approved by the National Association of Social Workers.~~

(c) Continuing.

(i) The candidate shall hold a master's degree in social work.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledges and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

(d) Professional. The candidate shall have completed an approved professional certificate program.

## WSR 07-20-117

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed October 3, 2007, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-060.

Title of Rule and Other Identifying Information: Uniform Commercial Code, WAC 308-390-105 Fees.

Hearing Location(s): Department of Licensing, Room 209, 405 Black Lake Boulevard, Olympia, WA 98502, on November 8, 2007, at 3:00 p.m.

Date of Intended Adoption: November 9, 2007.

Submit Written Comments to: Margaret Vogeli, P.O. Box 9660, Olympia, WA 98507-9660, e-mail UCC@DOL.WA.GOV, fax (360) 586-4414, by November 6, 2007.

Assistance for Persons with Disabilities: Contact Margaret Vogeli by November 1, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend fee rule to:

- Provide free online searching of UCC data.
- Reduce fees for search results mailed from the UCC office.
- Reduce fees for online filing of UCC financing statements and liens.
- Increase fees for paper filing of UCC financing statements and liens.

Reasons Supporting Proposal: Fees were last changed in 2001. The minimal paper filing fee increase of \$1.72 is offset by a reduction in all other fees. The proposed fees are all below the national mean of \$20.00.

Statutory Authority for Adoption: Chapters 62A.9A, 60.11, 60.13, 60.68 RCW, RCW 43.24.086.

Statute Being Implemented: RCW 62A.9A-525.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: If adopted, fee changes will be effective January 1, 2008.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Vogeli, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1530; Implementation and Enforcement: Nancy Skewis, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Fee rules are exempt under RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. Fee schedules are excluded under RCW 34.05.-328 (5)(b)(vi).

October 1, 2007  
Nancy Skewis  
Administrator

AMENDATORY SECTION (Amending WSR 04-15-100, filed 7/19/04, effective 8/19/04)

**WAC 308-390-105 Fees.** (1) The fee for filing and indexing a UCC (~~(document)~~) record of one or two pages communicated on paper (~~(or in a paper-based format is \$13.28)~~) is \$15.00. If there are additional pages, the fee is \$1.00 for each additional page. (~~But~~) The fee for filing and indexing a UCC (~~(document)~~) record communicated by a medium authorized by these rules which is other than on paper (~~(or in a paper-based format shall be \$10.00)~~) is \$8.00.

(2) (~~For an initial financing statement that indicates that it is filed in connection with a public finance transaction or in connection with a manufactured home transaction will be filed at the fee provided in subsection (1) of this section.~~)

(~~3~~) UCC search fee. The fee for processing a UCC search request communicated on paper (~~(or in a paper-based format is \$18.80)~~) is \$10.00. The fee for (~~filing and indexing~~) processing a UCC search request communicated by a medium authorized by these rules which is other than on paper (~~(or in a paper-based format shall be \$15.00)~~) is \$0.00.

(~~4~~) (3) UCC search(~~(—)~~) with copies. The fee for a UCC search and copies of all relevant (~~(documents)~~) records is (~~(\$26.57)~~) \$15.00.

## WSR 07-20-118

### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed October 3, 2007, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-114.

Title of Rule and Other Identifying Information: Uniform Commercial Code, WAC 308-390-306 Initial financing statement.

Hearing Location(s): Department of Licensing, Room 209, 405 Black Lake Boulevard, Olympia, WA 98502, on November 8, 2007, at 3:00 p.m.

Date of Intended Adoption: November 9, 2007.

Submit Written Comments to: Margaret Vogeli, P.O. Box 9660, Olympia, WA 98507-9660, e-mail UCC@DOL.WA.GOV, fax (360) 586-4414, by November 6, 2007.

Assistance for Persons with Disabilities: Contact Margaret Vogeli by November 1, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend rule to make a correction in subsection (3) concerning the calcula-

tion of lapse date for public financing transactions and manufactured home transactions. Under the proposed rule, these transaction types will be assigned a lapse date of five years from the date of filing.

Reasons Supporting Proposal: The legislation does not authorize a lapse date of thirty years from the date of filing.

Statutory Authority for Adoption: Chapter 62A.9A RCW.

Statute Being Implemented: Chapter 62A.9A RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: An emergency rule to make this correction was adopted August 14, 2007, and expires December 12, 2007.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Vogeli, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1530; Implementation and Enforcement: Nancy Skewis, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Exempt under RCW 34.05.310 (4)(c), (e).

A cost-benefit analysis is not required under RCW 34.05.328. Exempt under RCW 34.05.328 (5)(b)(iii), (v).

October 1, 2007  
Nancy Skewis  
Administrator

AMENDATORY SECTION (Amending WSR 01-10-056, filed 4/27/01, effective 7/1/01)

**WAC 308-390-306 Initial financing statement.** Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. The status of a debtor named on the record shall be active and shall continue as active until one year after the financing statement lapses.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless (~~(the initial financing statement indicates that it is filed with respect to a public financing transaction or a manufactured home transaction, in which case the lapse date shall be thirty years from the file date, or if)~~) the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

**WSR 07-20-119**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed October 3, 2007, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-136.

Title of Rule and Other Identifying Information: Commercial driver's licenses: Eligibility requirements, training requirements, test requirements, and fees for commercial driver's licenses.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on November 6, 2007, at 3:00 p.m.

Date of Intended Adoption: November 7, 2007.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail [cholloway@dol.wa.gov](mailto:cholloway@dol.wa.gov), fax (360) 586-8351, by November 5, 2007.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by November 5, 2007, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Creates new section WAC 308-100-005, to establish definitions of terms used in the proposed rules; creates new section WAC 308-100-031, to require that a applicant for a commercial driver's license have the skills and training necessary to operate a commercial motor vehicle safely; creates new section WAC 308-100-033, establishing the minimum training requirements for applicants for a commercial driver's license; creates new section WAC 308-100-035, to provide for employer certification that an applicant has the skills and training necessary to operate a commercial motor vehicle safely; amends WAC 308-100-040, to delete an outdated provision and to specify the components of a skills test for a commercial driver's license; and amends WAC 308-100-050 and 308-100-180, to update fee changes enacted by the legislature.

Reasons Supporting Proposal: Rules are necessary to implement changes made by the legislature in chapter 418, Laws of 2007.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.060, and 46.25.140.

Statute Being Implemented: RCW 46.25.060.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Mykel Gable, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

October 3, 2007  
 Jennifer Helget  
 for Mykel Gable  
 Assistant Director

NEW SECTION

**WAC 308-100-005 Definitions.** The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Classroom" means a room where classes are conducted by an instructor for interaction with students addressing knowledge of concepts, techniques, and procedures in the operation of commercial motor vehicles.

(2) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer.

(3) "Employer" means a person or entity that hires one or more individuals to operate a commercial motor vehicle on a regular basis during their normal course of employment and whose primary purpose is not to train operators of commercial motor vehicles.

(4) "Hour," as used in connection with training requirements, means no less than fifty minutes of training or instruction.

(5) "Lab" means a teaching environment involving a non-moving vehicle for hands on instruction supported by classroom material.

(6) "Observation" means the careful watching, as a passenger in a commercial motor vehicle, of street driving during the hours of course instruction, recording lessons learned and applying classroom material.

(7) "Range" means an area closed from the public where driving activities are practiced.

(8) "Street driving" means driving a commercial motor vehicle on a public road, where the traffic laws are enforced, consisting of city street, country road, and freeway driving.

NEW SECTION

**WAC 308-100-031 Skill and training requirements for commercial driver's license.** Unless waived under RCW 46.25.060(3), an applicant for a commercial driver's license must complete the minimum training requirements specified under WAC 308-100-033, or be certified by an employer under WAC 308-100-035 as having the skills and training necessary to operate a commercial motor vehicle safely.

NEW SECTION

**WAC 308-100-033 Minimum training requirements.**

(1) To ensure the quality of the training given, a training course acceptable to the director must:

(a) Be provided by, and under the direct supervision of:

(i) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(ii) A licensed private vocational school as that term is defined by RCW 28C.10.020(7); or

(iii) An entity in another state that the department has determined provides training or instruction equivalent to that required under this section.

(b) For training beginning on or after January 15, 2008, be not less than:

(i) One hundred sixty hours if the applicant is applying for a class A commercial driver's license, including not less than:

- (A) Forty hours of classroom instruction;
- (B) Thirty hours of street driving training;
- (C) Twenty hours of training in backing maneuvers; and
- (D) Seventy hours of combined lab training, range training, and observation;

(ii) Forty eight hours if the applicant is applying for a class B commercial driver's license, including not less than:

- (A) Twenty hours of classroom instruction;
- (B) Eighteen hours of street driving training;
- (C) Four hours of training in backing maneuvers; and
- (D) Six hours of combined lab training, range training, and observation;

(iii) Thirty two hours if the applicant is applying for a class C commercial driver's license, including not less than:

- (A) Sixteen hours of classroom instruction;
- (B) Ten hours of street driving training;
- (C) Two hours of training in backing maneuvers; and
- (D) Four hours of combined lab training, range training, and observation.

(c) Include core functions that have been specified by the department in the categories of training listed in subsection (1)(b) of this section.

(2) A licensed private vocational school must maintain individual student records. Student records shall document for each student:

- (a) Course attendance, starting, and ending dates;
- (b) The dates and times for each session;
- (c) The number of hours spent on each category of instruction covered; and
- (d) The name and signature of the instructor who provided each session of instruction or training.

(3) Student records must be maintained by a licensed private vocational school for the past five years from the date instruction or training has ended and must be made available for inspection at the request of the department.

(4) A licensed private vocational school may issue a certificate of completion on a form provided by the department to a student who has received the training required under subsection (1) of this section. An accredited institution of higher learning may issue a certificate of completion to a student who has received appropriate training. A certificate issued under this subsection must be used by a student to demonstrate to the department that he or she has met the minimum requirements required under this section.

#### NEW SECTION

**WAC 308-100-035 Employer certification.** An employer may certify an applicant for a commercial driver's license as having the skills and training necessary to operate a commercial motor vehicle safely on a form provided by the department. The certification must include the classification or classifications of commercial motor vehicle that the employee or prospective employee is competent to operate.

AMENDATORY SECTION (Amending WSR 00-18-068, filed 9/1/00, effective 10/2/00)

**WAC 308-100-040 Examination requirement for commercial driver's license.** ~~((Persons receiving a commercial driver's license by virtue of a waiver will be required to pass a written examination testing their knowledge of motor vehicle laws, rules of the road, and of the class of vehicle for which they are seeking the commercial driver's license.))~~

(1) Persons ~~((who receive))~~ applying for a commercial driver's license ~~((, without a waiver.))~~ will be required to pass a written examination testing their knowledge of motor vehicle laws, rules of the road, and of the class of vehicle for which they are seeking the commercial driver's license. They will also be required to demonstrate successfully their operating ~~((abilities))~~ skills for the class of vehicle for which they seek the commercial driver's license. Skill examinations under this subsection shall consist of three components:

(a) Pre-trip inspection;

(b) Basic controls; and

(c) Road test.

(2) The department may conduct written examinations in a group setting. Group examinations may be conducted at job sites, union halls, or other locations deemed appropriate by the department. If the department is conducting the written examination in a group setting, the payment of the basic fee and knowledge examination fee may be deferred until the applicant completes his or her application for a commercial driver's license.

AMENDATORY SECTION (Amending WSR 00-18-068, filed 9/1/00, effective 10/2/00)

**WAC 308-100-050 Fees.** (1) The basic fee for obtaining or renewing any class of commercial driver's license shall be ~~((twenty))~~ thirty dollars ~~((, unless the commercial driver's license is renewed or extended for a period other than five years, in which case the fee for each class shall not exceed four dollars for each year that the commercial driver's license is renewed or extended.))~~.

(2) The examination fee for each commercial driver's license knowledge examination, commercial driver's license endorsement knowledge examination, or any combination of commercial driver's license and endorsement knowledge examinations, shall be ten dollars.

(3)(a) Except as provided in subsection (b) of this subsection, the examination fee for each commercial driver's license skill examination conducted by the department shall be ~~((fifty))~~ one hundred dollars. ~~((An application for a commercial driver's instruction permit shall be accompanied by a fee of five dollars.))~~

(b) If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by the department shall be seventy-five dollars:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).

(4) An applicant who has failed the skill examination must re-test and pay the full fee required under subsection (3) of this section.

(5) Drivers selected for reexamination by the department may be subject to costs associated with the testing. ((These))

(6) The fees in this section are in addition to the regular drivers' licensing fees.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-10-024, filed 4/28/03, effective 5/29/03)

**WAC 308-100-180 Third party testing fee. (1)(a)** Except as provided in WAC 308-100-190 ~~((Requirements for exceeding base fee))~~ or subsection (b) of this subsection, the base fee for each classified skill examination or combination of skill examinations conducted by a third party tester shall not be more than ~~((seventy-five))~~ one hundred dollars.

(b) If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by a third party tester shall not be more than seventy-five dollars:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).

(2) An applicant who has failed the skill examination must re-test and pay the full fee required under subsection (1) of this section.

(3) The base fee shall apply only to the conducting of the examination, and is separate from any additional fees, such as vehicle use fees, which may be charged by the third party tester. Any additional fees to be charged shall be reported to the department.

(4) Fees owed to a third party tester under this section must be paid by the applicant to the department. The department will reimburse the third party tester for the fees as provided in the third party tester agreement entered into under WAC 308-100-140.

(5) The fees in this section are in addition to the regular drivers' licensing fees.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## WSR 07-20-120

### PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed October 3, 2007, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-162.

Title of Rule and Other Identifying Information: Adopting a definition of the term "fraud" in chapter 192-100 WAC; adopting a rule in chapter 192-320 WAC, clarifying the charging of benefits paid in error due to an employer's failure to accurately report wages and hours; and adopting new rules, and amending existing rules, within chapters 192-220 and 192-230 WAC, relating to the assessment and collection of benefit overpayments, including those resulting from fraud.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park, Olympia, WA, on November 8, 2007, at 1:30 p.m.

Date of Intended Adoption: November 20, 2007.

Submit Written Comments to: Pamela Ames, ESD Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98506, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 7, 2007.

Assistance for Persons with Disabilities: Contact Beverly Peterson by November 7, 2007, TTY (360) 902-9569 or (360) 902-9234.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will implement sections 1 and 7, chapter 146, Laws of 2007, ESSB 5373. The legislation imposes increasing disqualification periods and monetary penalties for occurrences of fraud beyond the first. These increased penalties apply to all fraud decisions mailed on or after January 1, 2008. The rules further explain how the penalty will be calculated, notification to the claimant and an interested employer, and clarify repayment requirements. In addition, the rules clarify that overpayments resulting from an employer's failure to correctly report wages and hours will not be charged to the claimant, and the employer will be charged for all benefit paid in error.

WAC 192-28-122, 192-28-125, 192-28-130, 192-28-135, 192-28-145, and 192-28-150 are repealed. The rules are revised for additional clarity and readopted in chapter 192-230 WAC.

Reasons Supporting Proposal: The department's rules are not consistent with the legislation as amended and must be revised to explain to employers, claimants, and staff how the statutes will be implemented. In addition, rules are readopted in new chapters organized by subject matter and rewritten to improve clarity [clarity] and understandability.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.20.010.

Statute Being Implemented: RCW 50.12.070 and 50.20.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665;

Implementation and Enforcement: Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not impose more than minor costs on businesses, nor will there be a disproportionate impact on small business. Further, business costs associated with these rules are the result of the underlying legislation.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, UI Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98506, phone (360) 902-9665, fax (360) 902-9799, e-mail [jmyers@esd.wa.gov](mailto:jmyers@esd.wa.gov).

October 2, 2007

Paul Trause  
Deputy Commissioner

#### NEW SECTION

**WAC 192-100-050 Fraud defined.** (1) For purposes of RCW 50.20.070, RCW 50.20.190, and Chapter 192-220 WAC, fraud means an action by an individual where all of the following elements are present:

(a) The individual has made a statement or provided information.

(b) The statement was false.

(c) The individual either knew the statement was false or did not know whether it was true or false when making it.

(d) The statement concerned a fact that was material to the individual's rights and benefits under Title 50 RCW.

(e) The individual made the statement with the intent that the department would rely on it when taking action.

(2) To decide whether an individual has committed fraud, the elements in subsection (1) must be shown by clear, cogent, and convincing evidence. Fraud cannot be presumed. Circumstantial evidence, rather than direct evidence, is enough to establish fraud if the evidence is clear, cogent, and convincing.

(3) This definition of fraud also applies to the term "misrepresentation" in RCW 50.20.190. A violation of RCW 50.20.070 must meet this definition of fraud.

#### **Chapter 192-220 WAC**

#### **OVERPAYMENT NOTICE, ~~((AND))~~ ASSESSMENT AND FRAUD**

#### NEW SECTION

**WAC 192-220-015 What is an overpayment assessment?** As used in this chapter and Chapter 192-230 WAC, the term "overpayment assessment" includes both unemployment benefits you received for which you were not eligible as well as any penalty assessed under RCW 50.20.070 resulting from fraud.

#### NEW SECTION

**WAC 192-220-040 How will the disqualification period and penalty established by RCW 50.20.070 be assessed?** (1) RCW 50.20.070 provides for increasing disqualification periods and dollar penalties when a second, third or subsequent fraud is committed. The department will decide whether an action is the first, second, third or subsequent occurrence based on the factors in this section.

(2) Once the department mails a fraud decision, any fraud that is found for weeks filed before, or within 14 days after, the mailing date of the decision will be treated as part of the same occurrence of fraud. This applies even if the decisions involve different eligibility issues.

Example: A fraud decision is mailed on June 1 for weeks claimed on April 30. On July 1, a decision is mailed assessing fraud for weeks claimed on March 31. Both decisions will be treated as the same level occurrence because the weeks covered by the July 1 decision were filed before the June 1 decision was mailed.

(3) The department will treat any fraud for weeks filed more than 14 days after the mailing date of a prior fraud decision as a separate occurrence of fraud. This applies even if the weeks claimed occur before the weeks for which fraud was assessed in the prior decision.

Example: On June 1, a decision is mailed assessing fraud for weeks you claimed on March 31. On July 10, late claims are filed for weeks before March 31 in which fraud is committed. The later decision is treated as a subsequent occurrence of fraud because the late claims were filed more than 14 days after June 1.

(4) The department will assess a disqualification period and penalty for each fraud decision issued based on whether it is a first, second, third or subsequent occurrence.

Example 1: A first occurrence of fraud is assessed on June 1 with a disqualification period of 26 weeks beginning with the week of June 1. Another fraud decision is issued on June 12 that is found to be part of the first occurrence. The disqualification period is 26 weeks beginning with the week of June 1st.

Example 2: A first occurrence of fraud is assessed on June 1 with a disqualification period of 26 weeks beginning with the week of June 1. A second occurrence of fraud is assessed on July 10 with a disqualification period of 52 weeks beginning with the week of July 10 and a penalty of 25 percent for the weeks fraudulently paid.

(5) All disqualifications and penalties in this section are in addition to the required repayment of any benefits paid as a result of fraud.

#### NEW SECTION

**WAC 192-220-045 How is the fraud penalty calculated?—RCW 50.20.070.** (1) The department will assess the penalty established under RCW 50.20.070 for second, third, or subsequent occurrences of fraud based on a percentage of benefits paid for those weeks in which the fraud occurred or that were paid as a result of fraud. The penalty will not apply to other weeks that may be included in the same eligibility decision.

(a) For a second occurrence, the penalty is 25 percent of benefits overpaid.

(b) For a third or subsequent occurrence, the penalty is 50 percent of benefits overpaid.

(2) The penalty amount, if not a multiple of one dollar, is rounded up to the next higher dollar.

#### NEW SECTION

**WAC 192-220-050 Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision?** (1) The department will issue a new decision showing the corrected disqualification period and penalty if a disqualification period or penalty changes because of a change to another fraud decision following a redetermination or appeal.

Example 1: A first occurrence of fraud is assessed on June 1 and a second occurrence is assessed on July 10. The June 1 fraud assessment is overturned through appeal, making the July 10 decision the first occurrence. The department will issue a correction to the July 10 decision showing the penalty for a first occurrence of fraud (26 week disqualification and no dollar penalty).

Example 2: A decision assessing a first occurrence of fraud is mailed on August 1 and benefits are denied for the following 26 weeks. On August 10, another fraud decision is mailed which is considered part of the first occurrence and denies benefits for the 26 weeks beginning August 1. The fraud included in the August 1 decision is overturned through appeal. The August 10 decision remains and the department will issue a correction showing the 26 week denial period begins with the August 10 mailing date.

(2) Although the revised decision does not restart the appeal period included in the original decision, you may appeal a change in the penalty or period of disqualification.

#### NEW SECTION

**WAC 192-220-060 Will I be notified of my right to appeal the overpayment?** (1) The department will notify you and all interested employers in writing about the overpayment assessment and the right to appeal any of the following elements of the assessment:

- (a) The reason for the overpayment.
- (b) The amount of the overpayment.
- (c) The finding of fault or nonfault.
- (d) The reason waiver of the overpayment was allowed or denied.

(2) As used in this chapter, an interested employer is:

- (a) An employer that provides information to the department which results in an overpayment assessment.
- (b) Any base year employer who reimburses the trust fund for benefits paid instead of paying unemployment taxes to the extent waiver is allowed.

#### NEW SECTION

**WAC 192-220-070 Overpayments under RCW 50.12.070 (2)(c).** You are not required to repay benefits improperly paid to you because an employer failed to correctly report your wages or hours and a later correction

results in a lower benefit amount or your claim becomes invalid. However, you remain liable for any overpayment assessment resulting from an eligibility decision issued before your claim became invalid that has become final.

#### NEW SECTION

**WAC 192-230-010 Repayment terms defined.** For purposes of this chapter, the following definitions apply:

(1) **Outstanding balance** means the total of all unpaid overpayment assessments (including penalties), court costs, interest charges, and surcharges.

(2) **Due date** means the date by which the minimum monthly payment must be received by the department as shown on the monthly billing statement mailed to your last known address.

(3) **Delinquent** means your minimum monthly payment is not received by the department on or before the due date.

#### NEW SECTION

**WAC 192-230-020 How are cash payments and off-sets applied to my overpayment?** (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year. If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1), the department will apply cash payments to the outstanding balance in the following order:

- (a) Court costs.
- (b) Interest.
- (c) Penalties based on fraud.
- (d) Overpaid benefits.
- (e) Surcharge assessed under RCW 41.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

#### NEW SECTION

**WAC 192-230-030 How is the minimum payment calculated?** The department will calculate your minimum monthly payment as described in this section, unless we approve another payment amount.

(1) If the overpayment was assessed by another state, the department will not calculate a minimum monthly payment. If the overpayment is being recovered by offset against future benefits, recovery will be done as described in WAC 192-230-100(4).

(2) For overpayments due to fraud, your minimum monthly payment will be the greater of (a) your weekly benefit amount or (b) three percent of your outstanding balance when the billing statement is mailed, rounded down to the next whole dollar amount.

(3) For all other overpayments, your minimum monthly payment will be the greater of (a) one-third of your weekly benefit amount, (b) three percent of your outstanding balance

when the billing statement is mailed, rounded down to the next whole dollar amount, or (c) twenty-five dollars.

#### NEW SECTION

**WAC 192-230-040 When are interest charges added to my overpayment?** (1) Interest will not be charged on an overpayment assessed by another state.

(2) Interest will be charged at the rate of one percent per month for overpayments based on fraud. The interest will be charged on both the overpaid benefits and the fraud penalty, if any. If you appeal the finding of fraud, interest will accrue while the appeal is pending and will be added to your overpayment if the finding of fraud is upheld.

(3) If the overpayment is not based on fraud, interest will be charged at the rate of one percent per month when any portion of two or more minimum monthly payments is delinquent.

(4) If the overpayment includes both fraud and non-fraud weeks, interest will be charged proportionally as described in subsections (2) and (3).

(5) In unusual circumstances, and at his or her discretion, the commissioner may suspend the assessment or collection of interest charges for overpayments not based on fraud.

(6) When calculating the interest charges, a month begins on the day following the last Saturday of one month and ends on the last Saturday of the next month.

#### NEW SECTION

**WAC 192-230-090 May I repay an overpayment by offset against my benefits?** (1) You may ask to repay an overpayment by offset on a valid benefit year as described in WAC 192-230-100. However, if the new balance available on your current benefit year is equal to or less than the balance of an overpayment on that benefit year, offset will be done at the rate of one hundred percent.

(2) You may ask to repay overpayments owing on prior benefit years by offset as described in WAC 192-230-100.

(3) During any valid benefit year, the total amount of benefits paid to you plus offset credits granted will not exceed the maximum benefits payable on the claim.

(4) If offset of an overpayment is granted against weeks that are later found to have been paid in error or as a result of fraud, the offset for the week(s) will be canceled and the amount will be restored to your overpayment balance.

(5) If any portion of this section conflicts with federal law or regulations, the federal law or regulations will apply.

#### NEW SECTION

**WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 (2)(c) and RCW 50.29.021 (3)(a).** (1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection (2).

(2) This section does not apply to the entities listed below. The department will charge only for the percentage of

benefits that represent their percentage of base period wages. These include wages earned:

- (a) In another state;
- (b) From a local government employer;
- (c) From the federal government; or
- (d) From any branch of the United States military.

#### REPEALER

The following sections of the Washington Administrative Code are hereby repealed:

WAC 192-28-122	Applications of offsets or cash repayments.
WAC 192-28-125	Recovery of benefit overpayment—Notification of right to appeal.
WAC 192-28-130	Minimum payment calculation.
WAC 192-28-135	Recovery of benefit overpayment—Overpayment collection and maximum benefit payable.
WAC 192-28-145	Overpayment subject to interest charges.
WAC 192-28-150	Benefit overpayment interest charges—Definitions.

### WSR 07-20-121

#### PROPOSED RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed October 3, 2007, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-163.

Title of Rule and Other Identifying Information: The proposal adopts new rules, and revises existing rules, within chapter 192-200 WAC, School or training. The rules outline requirements for claimants participating in an approved self-employment assistance training plan. They also describe how claimants will be identified as eligible for the program, the requirements that must be met by training providers, the criteria the department will use to approve a training plan, and the penalty for failure to participate in an approved self-employment training plan. In addition, a new section is added in chapter 192-180 WAC that outlines how the profiling model required under RCW 50.20.011 is designed.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park, Olympia, WA, on November 8, 2007, at 2:30 p.m.

Date of Intended Adoption: November 20, 2007.

Submit Written Comments to: Pamela Ames, ESD Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98506, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 7, 2007.



Assistance for Persons with Disabilities: Contact Beverly Peterson by November 7, 2007, TTY (360) 902-9569 or (360) 902-9234.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The proposed rules will implement SSB 5653 (chapter 248, Laws of 2007). The legislation authorizes the department to pay benefits to unemployment insurance claimants who are participating in an approved training plan with the goal of becoming self-employed.

WAC 192-12-186 is repealed. The rule is no longer necessary because the provision for notifying claimants in writing of the approval or disapproval of their training plan is incorporated in WAC 192-200-020(1).

**Reasons Supporting Proposal:** The department's rules are not consistent with the legislation as amended and must be revised to explain to employers, claimants, and staff how the statutes will be implemented. In addition, rules are readopted in new chapters organized by subject matter and rewritten to improve clarity [clarity] and understandability.

**Statutory Authority for Adoption:** RCW 50.12.010, 50.12.040, 50.20.010, and 50.20.250(7).

**Statute Being Implemented:** RCW 50.20.250.

Rule is not necessitated by federal law, federal or state court decision.

**Name of Proponent:** Employment security department, governmental.

**Name of Agency Personnel Responsible for Drafting:** Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; **Implementation and Enforcement:** Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not impose more than minor costs on businesses, nor will there be disproportionate impact on small business. Further, business costs associated with these rules are the result of the underlying legislation.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, UI Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98506, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

October 2, 2007

Paul Trause

Deputy Commissioner

#### NEW SECTION

**WAC 192-180-060 How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011.** (1) The department will use the profiling model described in this section to identify claimants who are likely to exhaust benefits and in need of job search assistance to obtain new employment.

(2) **Model.** Take all valid claims with a benefit year ending date that falls within a specified two-year time period. Screen out (a) members of unions participating in the referral union program (see WAC 192-210-100) and (b) claimants who do not have a job search requirement (employer

attached, in approved training, or unemployed due to strike or lockout) during the first payable week. For the remaining claimants with a job search requirement, statistically combine information on industry, occupation and other personal characteristics, and labor market characteristics to generate a numerical score indicating the likelihood of exhausting benefits before finding work. The scores may range from 0% (no likelihood of exhaustion) to 100% (certainty of exhaustion). Rank claimants based on their individual score from least likely to most likely to exhaust.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-200-005 Disqualification of students—RCW 50.20.095.** (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of 12 or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for 12 or more hours of instruction. You (~~will be required to~~) must certify to the department that you are not currently registered for 12 or more credit hours and will not be registered for 12 or more credit hours for at least 60 days. If you begin classes within 60 days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than 60 days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

(a) Are in approved training (~~as provided by~~) under RCW 50.20.043;

(b) Are in an approved self-employment assistance program under RCW 50.20.250; or

~~((b))~~ (c) ((When you apply, you demonstrate)) Show by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work when you apply.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-~~((005))~~ 010.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent;

(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

- (a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;
- (b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and
- (c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-200-010 Training defined—RCW 50.20-043 and RCW 50.20.250.** (1) The term "training" means

- (a) ~~((a))~~ A course of education with the primary purpose of training in skills that will allow you to obtain employment.
- (b) A self-employment assistance program that includes entrepreneurial training, approved by the commissioner, that will allow you to become self-employed.

(2) The term "training" does not include ~~((beginning))~~ a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

**WAC 192-200-020 Commissioner approval of training—RCW 50.20.043.** (1) **How do I apply for commissioner approved training?** If you wish to attend school or training while you receive unemployment benefits, and the training will interfere with your availability for full-time work, the training must be approved by the department. Contact the department and ask for an application for commissioner approved training. Your completed application must be returned to the unemployment claims telecenter. ~~((You will receive))~~ We will send you a decision, in writing, denying or approving your training application.

(2) **What factors will the department consider when reviewing my application?** The department will consider the following factors:

- (a) Your plan for completion of the training;
- (b) The nature of the training facility and the quality of the training;
- (c) Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the labor markets in which you intend to seek work;
- (d) Whether an oversupply of qualified workers exists;
- (e) Whether you have the qualifications and aptitudes to successfully complete such training; and
- (f) Whether your employment prospects in occupations in which you have training or experience do not exist or have substantially diminished in the labor market to the extent that the department determines you will probably be unemployed for a lengthy period. These diminished prospects could be the result of business or economic conditions in the area, or due to personal reasons such as your health, physical fitness, criminal background, or other circumstances of a similar nature.

(3) **What about training that is required by my job?** The commissioner will approve training that is required within an occupation if:

- (a) The training is a condition of your continued employment;
- (b) The scheduling of the training is determined by your employer or a work related entity, and not by you (the claimant); and
- (c) The training meets the requirements of subsections (2)(a), (b), (c), (d), and (e) of this section.

(4) **Can academic training be approved?** An academic training course may be approved if the conditions of subsections (1) and (2) of this section are met, and the training meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(5) **Can these requirements be waived?** In the case of individuals with physical or sensory handicaps, or in other unusual individual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

(6) This section does not apply to training in a self-employment assistance program under RCW 50.20.250.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-200-030 May I receive ~~((€))~~unemployment benefits while I am in training? ~~((€))~~** (1) To be eligible for unemployment benefits while in training, you must meet the following criteria ~~((must be met))~~:

- (a) The training must be full-time as defined by the training facility, including skills training classes designated as full-time by the local WorkSource administrator; and
- (b) You must be making satisfactory progress in training ~~((as defined in WAC 192-270-065))~~. Except as provided in subsection (c), "satisfactory progress" is defined in WAC 192-270-065; or

(c) If you are enrolled in an approved self-employment assistance program under RCW 50.20.250, "satisfactory progress" means you are attending classes and participating in other activities related to setting up a business within the timeframes outlined in your approved training plan.

(d) The certification that you are making satisfactory progress in full-time training must be signed by the registrar or equivalent person designated by the training facility.

(2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.

(3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search requirements of RCW 50.20.010 (1)(c) and 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

NEW SECTION

**WAC 192-200-040 Who is eligible to participate in the self-employment assistance program? (1) Eligibility.** To be eligible for the self-employment assistance program, you must:

- (a) Be otherwise eligible for regular unemployment benefits;

(b) Have been identified by the department as likely to exhaust regular unemployment benefits using the profiling model established under RCW 50.20.011 and WAC 192-180-060; and

(c) Enroll and satisfactorily participate in a self-employment assistance program approved by the commissioner.

(2) **Likely to exhaust.** The department will use the following process to identify claimants who are likely to exhaust for purposes of the self-employment assistance program:

(a) Assign profile scores to individuals with a claim ending during the most recent federal fiscal year (October 1 through September 30) using the model described in WAC 192-180-060.

(b) Find the number of these claimants who actually exhausted regular unemployment benefits and determine their percentage of the entire profiled population;

(c) The result will determine the percentile of profiled scores that will be identified as likely to exhaust. For example, assume during the most recent federal fiscal year, 15 percent of profiled claimants actually exhaust benefits. This means the 85th percentile of profile scores will be used to identify claimants who are likely to exhaust.

(d) Determine the lowest score assigned to claimants within this group.

(e) Claimants with that score or higher who file new claims during the following calendar year will be notified by the department they are potentially eligible for the self-employment assistance program.

(3) **Satisfactory participation.** The department will consider you to be satisfactorily participating if you are making satisfactory progress as defined in WAC 192-200-030 (1)(c).

#### NEW SECTION

**WAC 192-200-045 What training programs may be approved under the self-employment assistance program?** (1) To be approved as a training provider under the self-employment assistance program, a training program must include the following:

(a) Entrepreneurial training;

(b) Business counseling;

(c) Technical assistance; and

(d) Requirements to engage in other activities relating to setting up a business and becoming self-employed.

(2) The commissioner will develop and maintain a list of approved training providers.

#### NEW SECTION

**WAC 192-200-050 What criteria will the department use to approve my self-employment assistance training plan?** The department will consider the following factors when reviewing your application for the self-employment assistance program:

(1) That you have an adequate financial plan for completing training if your unemployment benefits run out before you complete training;

(2) That you have the qualifications and aptitudes to successfully complete the training; and

(3) That you have certified you will not compete with your former employer for up to one year after completing your training program.

(4) If you modify your training plan, the changes must be approved in advance by your training provider and the department.

#### NEW SECTION

**WAC 192-200-055 What other factors affect my eligibility for benefits under the self-employment assistance program?** (1) Any remuneration you receive while enrolled in a self-employment assistance training program will be deducted from your weekly benefit amount as required under RCW 50.20.130.

(2) If you complete your training program before your unemployment benefits run out, you are no longer eligible for benefits unless you meet the availability for work and job search requirements of RCW 50.20.010 (1)(c).

#### NEW SECTION

**WAC 192-200-060 What happens if I do not satisfactorily participate in my self-employment assistance training plan?** (1) If your training provider notifies the department that you are not satisfactorily participating in your approved training, the department will notify you in writing that you are no longer eligible for the self-employment assistance program. You will be required to meet the availability for work and job search requirements of RCW 50.20.010 (1)(c) to remain eligible for unemployment benefits.

(2) If you have been removed from the program because you failed to participate in a training plan, you will not be able to re-enroll in the program during your current benefit year.

#### REPEALER

The following section of the Washington Administrative Code is hereby repealed:

WAC 192-12-186

Training—Commissioner approval or denial of training.

#### **WSR 07-20-122**

#### **PROPOSED RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed October 3, 2007, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-161.

Title of Rule and Other Identifying Information: The proposal adopts a new chapter within Title 192 WAC and contains provisions related to the transfer of a business. These include defining a predecessor/successor relationship, the factors to be considered in determining whether such a relationship exists, and the burden of proof; examples of pre-

decessor/successor relationships; transfers through intermediaries; notification requirements for predecessors and successors; penalties for failure to respond to a request for information; tax rates that will be assigned following a business transfer; determining the percent of assets that will be transferred to a partial successor; defining the term "SUTA-dumping," its consequences, and the elements used to establish SUTA-dumping; and the penalties for knowingly evading the successorship requirements.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park, Olympia, WA, on November 8, 2007, at 11:00 a.m.

Date of Intended Adoption: November 20, 2007.

Submit Written Comments to: Pamela Ames, ESD Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98506, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 7, 2007.

Assistance for Persons with Disabilities: Contact Beverly Peterson by November 7, 2007, TTY (360) 902-9569 or (360) 902-9234.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will implement state legislation passed in 2006 (chapter 47, Laws of 2006, SSB 6359) and the SUTA-Dumping Act of 2004 (Public Law 108-295) passed by congress. The purpose of the rules is to clarify business transfer requirements for both predecessor and successor employers, and to reduce or eliminate the practice of SUTA-dumping, whereby employers attempt to unlawfully avoid the payment of state unemployment taxes.

WAC 192-300-050, 192-320-050, 192-320-051, and 192-320-055 are repealed. The business transfer requirements contained in these rules are incorporated into the new chapter 192-350 WAC which is included in this proposal.

Reasons Supporting Proposal: The rules will provide clarity for employers and staff concerning the requirements related to business transfers under the unemployment insurance program.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.29.064.

Statute Being Implemented: Chapter 47, Laws of 2006.

Rule is necessary because of federal law, Public Law 108-295.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Art Wang, 212 Maple Park, Olympia, (360) 902-9587; Implementation and Enforcement: Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not impose more than minor costs on businesses, nor will there be a disproportionate impact on small business. Further, business costs associated with these rules are the result of the underlying legislation.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, UI Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia,

WA 98506, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

October 2, 2007

Paul Trause  
Deputy Commissioner

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-300-050      What is a predecessor-successor relationship?

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-320-050      What are the requirements of partial successors under chapter 50.29 RCW?

WAC 192-320-051      What are the requirements of partial predecessors under chapter 50.29 RCW?

WAC 192-320-055      Predecessor-successor transfers through intermediaries.

### Chapter 192-350 WAC

#### TRANSFER OF BUSINESS

#### NEW SECTION

**WAC 192-350-010 What is a predecessor-successor relationship?** (1) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(2) A predecessor-successor relationship exists when a transfer occurs and one business (successor) acquires all or part of another business (predecessor). It may arise from the transfer of operating assets, including but not limited to the transfer of one or more employees from a predecessor to a successor. It may also arise from an internal reorganization of affiliated companies. Whether or not a predecessor-successor relationship (including a "partial successor" relationship) exists depends on the totality of the circumstances.

(3) **Predecessor.** An employer may be a "predecessor" if, during any calendar year, it transfers any of the following to another individual or organization:

(a) All or part of its operating assets as defined in subsection (5) of this section; or

(b) A separate unit or branch of its trade or business.

(4) **Successor.** An employer may be a "successor" if, during any calendar year, it acquires substantially all of a predecessor employer's operating assets. It may be a "partial successor" if, during any calendar year, it acquires:

(a) Part of a predecessor employer's operating assets; or

(b) A separate unit or branch of a predecessor employer's trade or business.

(5) **Operating assets.** "Operating assets" include the resources used in the normal course of business to produce operating income. They may include resources that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. "Goodwill" includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

(6) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (9) of this section.

(7) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that resulted from acquiring or reorganizing the business, beginning when the acquisition started and ending when the primary unit is transferred.

(8) **Factors.** No single factor is necessarily conclusive, but some of the factors which the department may consider as favoring establishment of a predecessor-successor (including a "partial successor") relationship are:

(a) Whether the employers are in the same or a like business (e.g., providing similar or comparable goods or services or serving the same market);

(b) Whether the asset(s) transferred constitute a substantial or key portion of similar assets for either the predecessor or successor;

(c) Whether the assets were transferred directly and not through an independent third party;

(d) Whether multiple types of assets (e.g., employees, real property, equipment, goodwill) transferred;

(e) Whether a significant number or significant group of employees transferred between employers;

(f) Whether the assets transferred at the same time or in a connected sequence, as opposed to several independent transfers;

(g) Whether the business name of the first employer continued or was used in some way by the second employer;

(h) Whether the second employer retained or attempted to retain customers of the first employer;

(i) Whether there was relative continuity and not a significant lapse in time between the operations of the first and second employers;

(j) Whether there was continuity of management between employers;

(k) Whether the employers shared one or more of the same or related owners;

(l) Whether documents, such as a contract or corporate minutes, show the sale or transfer of a business or a portion of a business; and

(m) Whether other factors indicate that a predecessor-successor relationship exists.

(9) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by the predecessor, successor, or a combination of both.

(10) **Burden of proof.** The department has the burden to prove by a preponderance of the evidence that a business is the successor or partial successor to a predecessor business. However, if a business fails to respond to requests for information necessary to determine a predecessor-successor relationship, the department may meet its burden by applying RCW 50.12.080 to determine the necessary facts.

#### NEW SECTION

**WAC 192-350-020 What are examples of when a predecessor-successor relationship exists?** The following examples are intended to illustrate factors that the department may consider in determining whether or not a predecessor-successor relationship exists.

(1) Business A, a sole proprietor widget manufacturer, sells its operations to new business B, a corporation. B plans to continue in the same type of widget manufacturing business as A. The sale includes the name of the business, goodwill, existing inventory, manufacturing equipment, and an ongoing lease. All employees of A transfer to B. This is a predecessor-successor relationship.

(2) Business A, a sole proprietorship retailer, goes out of business. It decides to sell some of its assets, including a company car. Business B, a retailer in a different business, decides to buy the car. It does not acquire any other assets, including employees, from A. Even though B has acquired an asset from A, there is no predecessor-successor relationship because the only relationship is a single asset which is incidental to the primary business of the employers.

(3) Business A and business B are independent corporations, but subdivisions of another entity C. C reorganizes and decides to eliminate A, lay off some employees, and transfer the remaining employees to B. B is the successor to A.

(4) Business A, a small sole proprietorship taxicab company, sells its one taxicab to business B, a much larger taxicab company. No employees transfer, but B tries to retain as much of A's customer base as possible. B is in the same business as A and is in a predecessor-successor relationship.

(5) Business A, a large taxicab company, sells one of its many taxicabs to business B, a small sole proprietorship taxicab company. No employees transfer, but B tries to retain as much of A's customer base as possible. B is in the same business as A and has acquired part of a predecessor employer's operating assets, so B is a partial successor.

(6) Business A, a sit-down restaurant for families which operates in a leased facility, closes. A month later business B, a family restaurant operating under a different name and under a new lease reopens in the same location. One of five servers laid off when business A closed is rehired by business B. If this is the full extent of the relationship between business A and business B, this is not a predecessor-successor relationship. Examples of some of the factors which might change this to a predecessor-successor relationship are: If business B shares some of the same ownership with business

A; the extent to which they advertise the same, use the same suppliers, maintain the same restaurant motif and decor, or use the same menu; the extent to which they use the same equipment and dishes; the extent to which the terms of the new lease appear to continue the previous one; and the extent to which other key employees continue from one employer to the other.

#### NEW SECTION

**WAC 192-350-030 Predecessor-successor transfers through intermediaries.** When operating assets are transferred from one employer to another by using an intermediary whose role is to arrange or assist the transfer process (RCW 50.04.320 and 50.29.062), the department will decide on a case-by-case basis whether a predecessor-successor relationship exists. The fact that an intermediary was used does not preclude the existence of a predecessor-successor relationship.

In determining if a predecessor-successor relationship exists, the department will consider the intent of the parties involved and the economic reality of the transactions, as opposed to the strict legal format of the multiple transfers.

#### NEW SECTION

**WAC 192-350-040 What notice must a predecessor or partial predecessor provide to the department?** (1) A predecessor or partial predecessor that quits or disposes of a business is liable for unemployment taxes under RCW 50.24.210. The predecessor or partial predecessor may give notice through the master business license; otherwise, it shall notify the department in writing within thirty days. The notice shall include the predecessor's or partial predecessor's department registration number and the name and contact information for the successor. All unemployment taxes payable are due immediately and shall be paid within ten days.

(2) A partial predecessor that does not quit or dispose of a business shall give written notice to the department within thirty days. The notice shall include the predecessor's or partial predecessor's department registration number and the name and contact information for the successor.

(3) In addition, a predecessor or partial predecessor shall provide the department with requested information about the transfer under WAC 192-350-060.

#### NEW SECTION

**WAC 192-350-050 What notice must a successor or partial successor provide to the department?** (1) A successor or partial successor may be liable for unemployment taxes under RCW 50.24.210.

(2) A successor or partial successor may notify the department through the master business application that it bought, leased, or acquired all or part of an existing business. Otherwise, a successor or partial successor shall notify the department in writing within thirty days. The notice shall include the successor's or partial successor's department registration number and the name of the predecessor.

(3) In addition, a successor or partial successor shall provide the department with requested information about the transfer under WAC 192-350-060.

#### NEW SECTION

**WAC 192-350-060 What are the consequences if the predecessor or successor employer fails to respond to requests for information?** (1) The department may send a letter to a predecessor or successor employer to determine a partial transfer of experience. A partial successor or predecessor employer must respond to the letter within thirty days of the mailing date. The response must show the percentage of operating assets transferred to the partial successor. Operating assets include the employees of the business.

(2) If the employer does not respond, the department may apply RCW 50.12.080 to determine necessary facts. In addition, for subsequent rate years the commissioner may estimate the percentage of operating assets transferred based on the best available information, which may include employment reports filed. That percentage will transfer to the successor until it provides compelling evidence to change the estimate. Any change in the estimate will be prospective only.

#### NEW SECTION

**WAC 192-350-070 What effect does a predecessor-successor relationship have on tax rates?** (1) Under RCW 50.29.062(1), if the successor is an employer at the time of the transfer of a business, the successor's tax rate shall remain unchanged for the rest of the calendar year. Beginning on January 1 of the year after the transfer and until the successor qualifies for its own rate, the successor's tax rate for each rate year shall combine the successor's experience with the experience of the predecessor or the relevant portions of the partial predecessor.

(2)(a) Under RCW 50.29.062 (2)(b), if the successor is not an employer at the time of the transfer of a business and if the transfer occurs after January 1, 2005, the successor's tax rate for the rest of the calendar year shall be the same as the predecessor employer at the time of the transfer. Any experience attributable to the predecessor shall be transferred to the successor.

(b) Under RCW 50.29.062 (2)(b)(ii), if there is a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be based on a combination of the successor's experience and the transferred experience from the predecessor.

(c) Under RCW 50.29.062 (2)(b)(i), if there is not a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(i)(B).

(3) If the successor simultaneously acquires businesses from two or more employers with different tax rates, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(iii).

(4) The tax rate on any payroll retained by a predecessor employer shall remain unchanged for the rest of the rate year

in which the transfer occurs. Beginning on January 1 after the transfer, the predecessor's tax rate shall be assigned under RCW 50.29.062 (3)(b).

(5) Changes in rate class for a predecessor or successor are effective only for the rate year the information was provided and for subsequent rate years.

(6) This section does not apply to a transfer of less than one percent of a business.

(7) This section does not apply if there is "SUTA dumping" under RCW 50.29.063.

#### NEW SECTION

**WAC 192-350-080 How does the department determine the percentage of operating assets transferred to a partial successor?** The department will determine the percentage of operating assets transferred primarily by considering employees transferred. The department will first consider the number of employees transferred, but may also consider the total salaries and wages involved in the transfer and other factors.

#### NEW SECTION

**WAC 192-350-100 What is "SUTA dumping" and what are the consequences if a significant purpose for the transfer of a business is SUTA dumping?** (1) Congress enacted the "SUTA Dumping Act of 2004" to establish nationwide minimum standards for curbing unlawful manipulation of unemployment taxes by employers. "SUTA" stands for state unemployment tax acts. Federal law describes "SUTA dumping" as the practice by some employers and financial advisors of manipulating state unemployment experience tax rating systems so that employers pay lower state unemployment insurance taxes than their unemployment experience would otherwise allow. Most frequently, it involves merger, acquisition, or restructuring schemes, especially those that shift workforce or payroll.

To comply with federal requirements, Washington enacted RCW 50.29.063, which imposes higher unemployment insurance tax rates on employers if a significant purpose of the transfer of a business was to obtain a lower tax rate. The law also imposes penalties if the intent was to knowingly evade successorship tax provisions or to knowingly promote the evasion of successorship tax provisions.

(2) Examples of SUTA dumping include an employer with a high tax rate because of its experience that:

(a) Dissolves the business in its present structure and reorganizes into a new entity to obtain a lower tax rate;

(b) Buys a smaller business with a low rate, then transfers employees to the smaller business to obtain the low rate; or

(c) Reorganizes and intentionally gives a false description of its business to obtain a lower rate based on a lower industry average.

#### NEW SECTION

**WAC 192-350-110 What elements must the department prove to establish "SUTA dumping"?** (1) In order to

prove SUTA dumping, the department must prove by a preponderance of the evidence that:

(a) A business is a successor or partial successor to a predecessor business under WAC 192-350-010; and

(b) A significant purpose for the transfer of a business was to obtain a lower tax rate under RCW 50.29.063(1).

(2) A "significant purpose" must be more than an incidental purpose, but may be one of many purposes. The department may show that a significant purpose for the transfer was to obtain a lower tax rate by factors such as:

(a) Business records, such as corporate minutes or other documents, show that a lower tax rate was considered as part of the decision for the transfer;

(b) An outside party, such as an accounting firm or tax advisor, recommended the transfer in order to lower the tax rate; or

(c) The employer knew or should have known that transfer of employees to the successor would lower the tax rate and the actual effect of the transfer was to lower taxes significantly.

(3) For additional penalties under RCW 50.29.063 (2) or (3), the department must also prove that an employer intended to knowingly evade or knowingly evaded successorship provisions or that a nonemployer knowingly promoted the evasion of successorship provisions. "Knowingly" means having actual knowledge or acting with deliberate ignorance or reckless disregard for the prohibitions. "Knowingly" includes an intent to evade, misrepresentation, or willful non-disclosure.

#### NEW SECTION

**WAC 192-350-120 What penalties apply if there is intent to knowingly evade successorship or knowingly promote the evasion of successorship provisions?** If the department determines that there was intent to knowingly evade successorship or knowingly promote the evasion of successorship provisions, it may assess penalties under RCW 50.29.063 (2) and (3).

### WSR 07-20-123

#### PROPOSED RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed October 3, 2007, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-164.

Title of Rule and Other Identifying Information: Adopting new rules, and amending existing rules, within chapter 192-300 WAC, relating to professional employer organizations (PEOs). Topics include definition of terms; requirements for PEOs, including those related to registration and notification to the department, payment of taxes, providing documentation of authority to act on behalf of client employer(s), and maintenance of and access to records; tax rates for PEOs and their client employers; enforcement, penalties, and collection of taxes owed by a client employer; and

prohibiting joint accounts by a PEO, a third-party payer, or a common paymaster.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park, Olympia, WA, on November 8, 2007, at 8:30 a.m.

Date of Intended Adoption: November 20, 2007.

Submit Written Comments to: Pamela Ames, ESD Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98506, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 7, 2007.

Assistance for Persons with Disabilities: Contact Beverly Peterson by November 7, 2007, TTY (360) 902-9569 or (360) 902-9234.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will implement sections 9 through 17, chapter 146, Laws of 2007 of ESSB 5373. The legislation requires PEOs to register with the department for unemployment insurance purposes, ensure their client employers are registered, file tax reports and payments on behalf of their client employers, maintain records that are available to the department for inspection, and sets penalties for PEOs that do not comply with the registration requirements. The proposed rules provide notice to the public as to how the department interprets and plans to implement the legislative changes.

Reasons Supporting Proposal: The department does not currently have any rules regulating PEOs and their client employers. The proposed rules are necessary to clarify terms and outline how the department will implement the legislation.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: Sections 9 through 17, chapter 146, Laws of 2007.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Art Wang, 212 Maple Park, Olympia, (360) 902-9587; Implementation and Enforcement: Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not impose more than minor costs on businesses, nor will there be a disproportionate impact on small business. Further, business costs associated with these rules are the result of the underlying legislation.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, UI Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98506, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

October 2, 2007

Paul Trause  
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 99-20-128, filed 10/6/99, effective 11/6/99)

**WAC 192-300-180 Joint accounts.** ~~((Relates to))~~  
(RCW 50.24.170.)

(1) Any two or more employers may form joint accounts (consolidate) for the purposes of reporting and dealing with the ~~((unemployment insurance division of the))~~ department.

(2) Joint accounts must be acceptable to the department and cannot:

~~((i))~~ (a) Impair any obligation by these employers to the ~~((unemployment insurance division))~~ department;

~~((ii))~~ (b) Interfere with the payment of benefits to ~~((workers))~~ claimants;

~~((iii))~~ ~~Result in any administrative inconvenience to the division)~~ (c) Increase administrative costs to the department; or

~~((iv))~~ (d) Allow an employer to receive an experience rate to which it was not entitled.

(3) Joint accounts must provide for the maintenance of all records ~~((necessary under the Employment Security Act))~~ required under Title 50 RCW.

(4) Joint accounts may not be formed until the department has approved in writing the consolidation plan ~~((of consolidation, in writing))~~.

(5) A joint account ~~((should never be confused with a common paymaster. A common paymaster is an independent third party who contracts with, and represents, two or more employers; and who files a combined tax report for those employers. Common paymaster does not meet the department's definition of a joint account. We do not allow this type of reporting))~~ may not be established for a third-party payer under RCW 50.04.248, a common paymaster under RCW 50.04.065, or a professional employer organization under RCW 50.04.298.

#### NEW SECTION

**WAC 192-300-200 What is a professional employer organization (PEO)?** A "professional employer organization," as further defined in RCW 50.04.298(1), is a person or entity that enters into an agreement with one or more client employers to provide professional employer services in a coemployment relationship. The professional employer services may include functions such as human resources, risk management, payroll administration services, or unemployment insurance. Both the professional employer organization and the client employer are considered coemployers.

A "professional employer organization" includes entities that use the term "staff leasing company," "permanent leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer" and provide professional employer services to client employers. It does not include independent contractors under RCW 50.04.140, temporary staffing services companies and services referral agencies under RCW 50.04.245, third-party payers under RCW 50.04.248, labor organizations, or common paymasters or common pay agents under RCW 50.04.065.



NEW SECTION**WAC 192-300-210 What requirements apply to professional employer organizations and client employers?**

(1) Both professional employer organizations and client employers must comply with all applicable state laws. Professional employment agreements may not allocate rights and obligations between professional employer organizations and client employers other than in compliance with state law.

(2) Professional employer organizations must file a master business application with the state. They must register with the department under RCW 50.12.070 and obtain an employer reference number issued by the department (employment security number). This applies to professional employer organizations that have their own employees in this state and to professional employer organizations that have client employers who do business or have employees in this state.

(3) Professional employer organizations must ensure that their client employers are registered with the department under RCW 50.12.070. Professional employer organizations may only file papers to register the client employer if they also have filed with the department a power of attorney form signed by an authorized representative of the client employer.

(4) In order to represent a client employer to the department, a professional employer organization must file with the department a power of attorney in a form acceptable to the department. The signed power of attorney form may be sent by fax or in other electronic form acceptable to the department. The department will acknowledge receipt of the power of attorney to the sender and will send a letter to the client employer confirming that the professional employer organization is authorized to represent it to the department.

(5)(a) Professional employer organizations shall provide the department with the following information for client employers: Names, addresses, unified business identifier numbers, employment security numbers, names and Social Security numbers of corporate officers, owners and partners (if not a corporation or limited liability company), or limited liability company members, effective date the relationship between the professional employer organization and client employer began, and a business location in Washington state where payroll and business records for the client employer will be made available for review or inspection when requested by the department.

Information is due:

(i) By September 1, 2007, for all then existing client employers;

(ii) Within thirty days for any client employer registering with the department for the first time; and

(iii) Within thirty days of the effective date whenever the professional employer organization and a client employer enter a professional employer agreement.

(b) Professional employer organizations shall notify the department within thirty days of the termination of a relationship with a client employer. The notice shall include the name, address, unified business identifier number, employment security number, effective date, and contact information for the client employer.

(c) The department shall provide forms for the information required in this subsection. The department may require

the professional employer organization to submit the information in an electronic format.

(6) Professional employer organizations shall maintain accurate payroll records for each client employer and make them available for review and inspection at a business location in Washington state when requested by the department. The location may vary for different client employers. Appropriate department facilities may be used for this purpose with the consent of the department. The department may require client employers or professional employer organizations to produce other business and financial records at an in-state location in the same manner it requires other employers to do so under WAC 192-310-050.

(7) Professional employer organizations shall file quarterly tax and wage reports for client employers they represent in a format specified by the department. Reports shall contain separate and distinct information for each client employer, regardless of the format used. Professional employer organizations may file a single electronic report for multiple client employers, separate paper or electronic reports for individual client employers, or a combination of electronic and paper filing.

(8) The department shall provide an electronic system for filing quarterly tax and wage reports which allows a professional employer organization to make payments when filing for multiple client employers with a single payment for those employers.

(9) If the professional employer organization files separate quarterly tax and wage reports for individual client employers, it shall make separate payments for each employer.

NEW SECTION**WAC 192-300-220 What unemployment taxes apply to professional employer organizations and client employers?**

(1) Effective January 1, 2008, each professional employer organization and each client employer shall be assigned an individual tax rate based on its own experience.

(2)(a) This subsection applies to professional employer organizations and client employers which have a coemployment relationship as of January 1, 2008.

(b) Except as provided in (d) and (e) of this subsection, the tax rate for professional employer organizations and client employers shall be determined on the basis that the client employer transferred from the professional employer organization effective January 1, 2008. A client employer's proportionate experience (benefits charged and taxable payroll) for the entire first quarter beginning January 1, 2008, shall transfer to the client employer. On or after January 1, 2008, experience shall transfer to a client employer regardless of whether the professional employer organization was the base year employer prior to that date.

(c) The client employer's tax rate shall remain unchanged for the remainder of the rate year in which the transfer occurred.

(d) Client employers that are qualified employers under RCW 50.29.010 or are delinquent under RCW 50.29.025 (2)(c)(i) and that joined a professional employment organization after the computation date of July 1, 2007, shall be

assigned their own tax rate for 2008 as if they had not joined the professional employer organization. Any experience from July 1, 2007, to December 31, 2007, assigned to the professional employer organization for those client employers shall transfer to the client employer for purposes of setting future rates.

(e) If an employer is registered with the department and has its own tax rate, but is also a client employer for purposes of some of its employees, it shall keep its own tax rate for 2008 and that rate shall apply to all its employees. Any employees of a client employer that is in a coemployment relationship with a professional employer organization shall be considered a branch account under the registered employer.

(f) Beginning on January 1 of the year after the transfer, the client employer's tax rate for each rate year shall be based on a combination of:

(i) The client employer's experience with payrolls and benefits; and

(ii) The experience assigned to the professional employer organization which is attributable to the client employer, based on the percentage of employees transferred as of January 1, 2008, regardless of the date the client employer joined the professional employer organization.

(g)(i) The professional employer organization's tax rate on any payroll retained by the professional employer organization shall remain unchanged for the remainder of the year in which the transfer occurs.

(ii) Beginning on January 1 of the year after the transfer, the professional employer organization's tax rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience that has been attributed to client employers.

#### NEW SECTION

**WAC 192-300-230 What enforcement, penalties, and collection procedures apply to professional employer organizations and client employers?** (1) A professional employer organization may collect and make payments on behalf of a client employer, but the client employer remains liable for the payments of any taxes, interest, or penalties due.

(2) Unless the professional employer organization has already notified the department that it has not received payments from the client employer, the department shall first attempt to collect any payments due from the professional employer organization and shall not attempt to collect from the client employer until at least ten days from the date payment was due. Collection procedures shall follow the requirements of chapter 50.24 RCW.

(3) A professional employer organization may elect to provide a bond to cover payments due. Any bond for this purpose shall be filed with the department, shall be in a form satisfactory to the commissioner, and shall be in an amount not less than the amount of contributions due in the highest quarter of the preceding calendar year. A bond does not relieve the professional employer organization or its client employers of ultimate liability for payments due.

(4) In case of error by a professional employer organization in which reports are incomplete, inaccurate, or late, or if the professional employer organization makes a single payment that does not match the amount due for multiple employers, the department will initially apply any penalty and interest charges for all amounts due against the professional employer organization, regardless of whether the professional employer organization has employees in Washington. However, the client employer ultimately remains liable for any taxes, penalties, or interest due.

All client employers of a professional employer organization may be subject to the tax rate for delinquent taxpayers if a delinquency under WAC 192-320-035 cannot be assigned to a specific client employer.

(5) If a professional employer organization reports employees of a client employer as its own employees, a first violation will be considered an incorrect report for the professional employer organization and an untimely report for the client employer under RCW 50.12.220(2). A second violation will be considered knowing misrepresentation under RCW 50.12.220(3). A third violation will be considered grounds for revocation of the authority of a professional employer organization to act on behalf of its client employers.

(6) The department may revoke the authority of a professional employer organization to act on behalf of its client employers if the professional employer organization substantially fails to comply with the provisions of RCW 50.12.300. An order to revoke the authority of a professional employer organization shall be considered an appealable order under chapter 34.05 RCW comparable to an order and notice of assessment under RCW 50.32.030.

#### **WSR 07-20-124**

#### **PROPOSED RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed October 3, 2007, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-160.

Title of Rule and Other Identifying Information: The proposal includes new and amended rules within Title 192 WAC. These include provisions relating to corporate officers, including registration requirements; eligibility for benefits; reporting requirements; and election, exemption, or reinstatement of coverage. The rules cover calculation of tax rates; establishing tax rates for new, qualified, and delinquent employers; tax refunds; penalties for filing late or incomplete reports; charging of benefits when an employer fails to report wages or hours; the employment status of certain performers; and posting of notices by employers, including churches and religious organizations. The rules also define the terms contributions, stipend, and reimbursable employers; define hours worked, including practice, preparation, and rehearsal time by performers; clarify exemptions for casual labor and musicians and entertainers; specify the documentation required for employer representatives; and clarify how field audits

will be conducted, including estimating payroll and wages when an employer fails to provide the information.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park, Olympia, WA, on November 8, 2007, at 10:00 a.m.

Date of Intended Adoption: November 20, 2007.

Submit Written Comments to: Pamela Ames, ESD Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98506, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 7, 2007.

Assistance for Persons with Disabilities: Contact Beverly Peterson by November 7, 2007, TTY (360) 902-9569 or (360) 902-9234.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules implement 2007 legislation, including SHB 1278 (chapter 51, Laws of 2007) tax rates for new employers; sections of ESSB 5373 (chapter 146, Laws of 2007) relating to reporting requirements, penalties, and corporate officers; SSB 5534 (chapter 366, Laws of 2007) exempting payments by certain small performing arts industries; SSB 5702 (chapter 387, Laws of 2007), requiring notification by religious organizations to their employees; and ESSB 5915 (chapter 287, Laws of 2007), employer notices. These changes will ensure the rules are consistent with the amended statutes. In addition, following a general review of existing unemployment tax rules and policies, the proposal includes new rules or changes to the existing rules that will either clarify existing policies or convert policies to rules. The amendments to chapter 192-300 WAC and new WAC 192-310-150, 192-310-160, and 192-310-170 will be effective January 1, 2009. Other rules will be effective January 1, 2008.

Reasons Supporting Proposal: The rules are necessary to implement 2007 legislation. In addition, RCW 34.05.230 encourages agencies to convert longstanding policy statements into rule. Adopting these rules will notify the public as to how the department interprets the employer tax provisions in Title 50 RCW, and how it intends to implement legislative changes.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: Chapters 51, 146, 366, 387, and 287, Laws of 2007.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Art Wang, 212 Maple Park, Olympia, (360) 902-9587; Implementation and Enforcement: Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not impose more than minor costs on businesses, nor will there be a disproportionate impact on small business. Further, business costs associated with these rules are the result of the underlying legislation.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, UI Rules Coordinator,

Employment Security Department, P.O. Box 9046, Olympia, WA 98506, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

October 2, 2007

Paul Trause

Deputy Commissioner

AMENDATORY SECTION (Amending WSR 99-20-125, filed 10/6/99, effective 11/6/99)

**WAC 192-100-500 General definitions—Relating to wages.** For purposes of unemployment insurance taxes only:

(1) **Wages.** Includes all payments for personal services performed by an employee for an employer including the cash value of all remuneration paid in any medium other than cash including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for the employer.

(2) **Wages paid.** Includes wages that are actually received by an individual and wages that are contractually due but are not paid because the employer refuses or is unable to make such payment. (See RCW 50.24.015).

(3) **Wages constructively paid.** Those wages set aside, by mutual agreement of both parties (employer and employee) to be paid at a later date. They are reported for tax purposes when actually paid to the employee. The wages set aside can have no substantial limitation or restriction as to the time or manner or condition upon which payment is to be made. In addition the ability to draw on the wages must be within the control and disposition of the employee.

(4) **Deductions.** The amount(s) any federal or state law requires an employer to deduct from the wages of an individual in its employ; and to pay the amount deducted to the federal or state government, or any of their political subdivisions. The amount deducted will be considered wages and to have been paid to the individual at the time of the deduction. Other amounts deducted from the wages of an individual by an employer also constitute wages paid to the individual at the time of the deduction.

(5) **Nominal stipends.** A stipend is considered nominal when it does not exceed six hundred dollars per year.

(6) **Contributions.** Title 50 RCW generally uses the term "contributions" to refer to unemployment taxes. Title 192 WAC generally uses the term "unemployment taxes" to refer to contributions. The two terms are treated interchangeably unless the context provides otherwise.

#### NEW SECTION

**WAC 192-140-220 What happens if I do not respond to a request for information about my corporate officer status?** If you do not respond to a request for information about your corporate officer status, the department will presume you are not unemployed as defined in RCW 50.04.310 and benefits will be denied under RCW 50.20.010. This denial is for an indefinite period of time and will continue until you show you are unemployed as defined under RCW 50.04.310.

NEW SECTION

**WAC 192-300-010 What documentation and liability requirements apply to employer representatives?** (1) In order to represent an employer before the department, a representative from a third party must file with the department a power of attorney in a form acceptable to the department. The department may accept a signed power of attorney form by fax or in other electronic form. The department will send a letter to the employer confirming that the employer has authorized the employer representative to represent it before the department.

(2) The employer remains liable for the payments of any taxes, interest, or penalties due if its third party representative errs in registering, filing reports, or paying unemployment taxes.

NEW SECTION

**WAC 192-300-060 What are reimbursable employers?** (1) Some nonprofit organizations, states and political subdivisions of the state, and Indian tribes may qualify under chapters 50.44 and 50.50 RCW as reimbursable employers which reimburse the department for unemployment benefits actually paid to separated employees instead of paying unemployment taxes.

(2) In order to qualify, a nonprofit organization must be a section 501 (c)(3) tax-exempt organization under the federal tax code and must provide the department with a copy of its section 501 (c)(3) letter.

(3) If a new employer chooses and qualifies for the reimbursable method, the department may require it to post a bond or security deposit under RCW 50.44.070. Political subdivisions and nonprofit hospitals, colleges, and universities are not required to post a bond or security deposit. For a new employer, the department will base the amount of any required bond on the projected taxable payroll for the coming year, multiplied by the industry average tax rate, with the result rounded down.

(4) For an existing reimbursable employer, the department will base the amount of any required bond based on individual wages of each employee for the previous four complete calendar quarters, multiplied by new taxable wage amounts using the maximum taxable wage base assigned for the coming year, with the result rounded down.

(5) If a reimbursable employer switches to the taxable method, the employer will be assigned the industry average rate until it satisfies the requirements to become a "qualified employer" under RCW 50.29.010. This does not apply to delinquent employers under WAC 192-330-110.

AMENDATORY SECTION (Amending WSR 00-05-064, filed 2/15/00, effective 3/17/00)

**WAC 192-300-170 Requirements for election of unemployment insurance coverage.** The department ~~((has to make timely and accurate employer liability determinations and unemployment insurance payments. It is under))~~ applies RCW 50.04.165 and 50.24.160 ~~((that we))~~ to establish the election of coverage for unemployment insurance by

employers where personal services are not considered employment under the law:

(1) RCW 50.24.160 allows any business to ~~((file a))~~ request ~~((for election of))~~ unemployment insurance coverage for personal services that are not covered as employment:

(a) The request must be in writing to the department;

(b) The department must approve the request for election of coverage in writing; and

(c) The request must be signed by someone legally authorized to bind the business.

(2) ~~((RCW 50.04.165 allows a corporate employer to elect to cover the personal services of its corporate officers for unemployment insurance coverage:~~

~~((a) A corporate employer must submit a written request for voluntary coverage signed by a person authorized to legally bind the corporation. The department must receive this request no later than thirty days prior to the end of the quarter in which the change is to begin;~~

~~((b) "Corporate officer" is defined in RCW 23A.08.470;~~

~~((c) Corporate officers appointed under RCW 23B.08.400, other than those covered by Chapter 50.44, are not considered services in employment unless the corporation elects coverage of all its corporate officers under RCW 50.04.165;~~

~~((d) All services of corporate officers are considered exempt until the effective date of approval of election of coverage by the department; and~~

~~((e) Corporate officers are exempt under RCW 50.04.165 only if the employer has notified them in writing that they are ineligible for unemployment insurance benefits. The exemption becomes effective with the date of the written notice. The written notice must:~~

~~((i) Have the name(s) of the officer(s) who is/are being exempted;~~

~~((ii) Have the effective date of the exemption;~~

~~((iii) Have a signature of the officer(s) acknowledging receipt of the request;~~

~~((iv) Be kept on file by the corporation; and~~

~~((v) Be available for review by any department official upon request.~~

~~((3) If an agricultural corporate employer voluntarily covers its officers, the wages or salaries paid for such services will be used to determine the employer liability of the agricultural employer. Wages or salaries paid for service of corporate officers exempt under RCW 50.04.165 will not be used to determine liability of agricultural employers.~~

~~((4))~~ All changes in elected coverage remain in effect for at least two calendar years. The business may terminate coverage only at the end of a calendar year. ~~((A written request by the employer must be sent to the department by January 15th following the end of the last calendar year of desired coverage.))~~ To terminate coverage, the employer must send a written request to the department by January 15.

~~((5))~~ (3) The department reserves the right to disapprove ~~((an election for unemployment insurance))~~ a request for coverage ~~((due to))~~ because:

(a) The applicant ~~((being nonliable))~~ is not liable for federal unemployment taxes (FUTA); ~~((or))~~

(b) The ~~((seasonal nature of the))~~ occupation or industry is seasonal; or

(c) Other reasons apply.

~~((6))~~ (4) The department reserves the right to cancel unemployment insurance coverage for a voluntary election employer because:

- (a) Of nonpayment of unemployment insurance taxes ~~((and))~~ or failure to file an unemployment insurance tax ~~((and))~~ and wage report; ~~((or))~~
- (b) Of misrepresentation of facts; ~~((or))~~
- (c) Coverage is not used for involuntary unemployment as outlined in RCW 50.01.010; or
- (d) Other reasons apply.

#### NEW SECTION

**WAC 192-300-185 Branch accounts.** The department may establish branch accounts for a single registered employer. All branch accounts shall be consolidated for purposes of establishing a single tax rate for the employer.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

**WAC 192-310-010 What reports are required from an employer?~~((---))~~ (RCW 50.12.070.)** (1) **Master business application.**

Every person or unit with one or more individuals performing services for it in the state of Washington must file a master business application with the department of licensing. ~~((The application must be in a format approved by the commissioner.))~~

(2)(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited

liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

#### (3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; and

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030).

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using the current version of UIFastTax, UIWebTax, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

AMENDATORY SECTION (Amending WSR 98-14-068, filed 6/30/98, effective 7/31/98)

**WAC 192-310-020 Tax payments by employers**~~((—))~~ **(RCW 50.24.010)**. (1) Taxes are payable quarterly. Each quarterly payment must include the taxes due on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which such taxes have accrued. Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the tax payment must be received or post-marked on the next working day.

(2) Tax payments are due immediately when an employer ceases business or the account is closed by the department. Taxes not paid immediately are delinquent, but interest will not accrue until the first day of the second month following the end of the calendar quarter for which such taxes have accrued.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

**WAC 192-310-030 What are the report and tax payment penalties?** **(RCW 50.12.220)** (1) **Penalty for late tax reports.** An employer who does not file a tax report within the time frame required by WAC 192-310-010 (2)~~((e))~~ **(d)** must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax report.** An employer must file a tax report that is complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

(i) The entire wage report is not filed on time; or  
(ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or  
(iii) A significant number of employees are not reported;

or

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC

192-310-010 (2)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

(i) One employee and reports incomplete wage elements for the one employee; or

~~((ii))~~ (ii) Two to ~~((19))~~ nineteen employees and reports incomplete wage ~~((records))~~ elements for two or more employees; or

~~((iii))~~ (iii) Twenty to ~~((49))~~ forty-nine employees and reports incomplete wage ~~((records))~~ elements for three or more employees; or

~~((iii))~~ (iv) Fifty or more employees and reports incomplete wage ~~((records))~~ elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) ~~((Two hundred fifty dollars or))~~ When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, ~~((whichever is less--))~~ up to a maximum of \$250.00, but not less than:

<u>(i) 2nd occurrence</u>	<u>\$75.00</u>
<u>(ii) 3rd occurrence</u>	<u>\$150.00</u>
<u>(iii) 4th and subsequent occurrences</u>	<u>\$250.00</u>

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

<u>(i) <del>((1st))</del> 2nd occurrence</u>	<u>\$75.00</u>
<u>(ii) <del>((2nd))</del> 3rd occurrence</u>	<u>\$150.00</u>
<u>(iii) <del>((3rd))</del> 4th and subsequent occurrences</u>	<u>\$250.00</u>

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on

time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ~~((40))~~ ten percent of total taxes due or \$10.00, whichever is greater ~~((; and~~

~~((d) Fourth month and every month following for the life of the delinquent debt: A total of 20 percent of total taxes due or \$10.00, whichever is greater)).~~

**(6) Waivers of late filing and late payment penalties.**

The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; or

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules; and

(c) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has

been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

**(7) Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format ~~((one-time-only))~~ when the employer can demonstrate ~~((making a good faith attempt to correct the problem in a timely manner after the department notified the employer of the problem))~~ that the incomplete or incorrectly formatted report was not due to the fault of the employer.

**(8) Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

**(9) Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

**(10) Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

**AMENDATORY SECTION** (Amending WSR 99-20-134, filed 10/6/99, effective 11/6/99)

**WAC 192-310-035 Employer reports—Failure to report or incorrectly reporting hours or wages.** (1) If an employer ~~((fails to))~~ does not report hours worked and a former employee ~~((files))~~ applies for benefits, ~~((benefits will be based on the amount of hours calculated by using))~~ department will divide the wages earned by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked.

(2) If the employer ~~((subsequently produces))~~ later provides the actual hours worked, the department will recalculate the former employee's claim ~~((will be recalculated)).~~

(3) ~~((In the event))~~ If the claim is voided ~~((;))~~ or benefits are reduced as a result of the recalculation, ~~((the original claim amount will not be considered as an overpayment against))~~ the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

AMENDATORY SECTION (Amending WSR 99-20-141, filed 10/6/99, effective 11/6/99)

**WAC 192-310-040 Employer reports—Further defining hours worked**~~((—))~~ **(RCW 50.12.070)**. This section defines the hours that ~~((should be included on the employer's))~~ employers must include on the quarterly tax and wage report.

(1) **Vacation pay.** ~~((The employer will))~~ Report the number of hours an employee is on paid leave ~~((with pay))~~. ~~((Cash))~~ Do not report payments made in place of vacation time ~~((will not be counted))~~ as hours worked.

(2) **Sick leave pay.** ~~((In accordance with))~~ As provided in RCW 50.04.330(1), any ~~((amount of))~~ payments made to ~~((the))~~ an employee ~~((covered))~~ under a qualified plan ~~((regarding))~~ for sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered ~~((to be))~~ wages or compensation. ~~((Neither hours nor wages are reportable.))~~ Do not report these as hours or wages. For payments under a nonqualified plan, ~~((the))~~ report both wages and hours ~~((are reportable))~~.

(3) **Overtime.** ~~((The employer will))~~ Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned or piecework employees.** ~~((An employer will))~~ Report the actual number of hours worked by employees paid by commission or by piecework. ~~((In the absence of))~~ If there are no reliable time keeping records, ~~((the employer will))~~ report a full-time commissioned or piecework employee for 40 hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, ~~((the employer will))~~ report the actual number of hours ~~((that would have been))~~ for which they were ~~((compensated))~~ paid. Wages in lieu of notice ~~((compensates))~~ of termination pays the employee ~~((upon termination of service))~~ whose services have been terminated by the employer for the amount of wages they would have earned during the ~~((specified))~~ notice period.

(6) **Employees on salary.** If a salaried employee works other than the regular 40-hour week, ~~((the employer will))~~ report the actual number of hours worked. ~~((In the absence of a))~~ If there are no reliable time keeping records, ~~((the employer will))~~ report 40 hours for each week in which a full-time salaried employee ~~((for 40 hours each week they))~~ worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least 15 classroom or laboratory hours to be considered full-time. A teaching load of less than 15 hours of instruction is considered part-time.

~~((i))~~ ~~((In the absence of))~~ (a) If there is no reliable hourly information, ~~((an employer will))~~ report the hours of instruction as part-time ~~((using))~~ based on 15 credits as a full-time teaching load and 35 hours as ~~((the base per week using the following computation))~~ full-time employment for a week.

For example, an instructor teaches 12 ~~((hours))~~ credits per week. 12 ~~((hours))~~ divided by 15 ~~((hours))~~ equals 80%. 35 hours times 80% equals 28 hours. The employer ~~((will))~~ should report the 28 hours to the department on the employer's quarterly tax and wage report.

~~((ii))~~ (b) Any part-time salaried instructor who does not establish a valid claim because of this formula~~((;))~~ may provide the department with ~~((documentation))~~ evidence of hours worked ~~((which))~~ that exceeds the ~~((reported))~~ hours reported by the employer.

(8) **Severance pay.** ~~((Employers will))~~ Do not report additional hours ~~((worked))~~ for severance pay. Report only the dollar amount paid to the employee. Severance pay is ~~((reportable and))~~ taxable because it is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** ~~((The employer will))~~ Report the actual hours worked for performing services~~((;))~~ which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** ~~((An employer will))~~ Do not report additional hours for bonuses, tips or other gratuities if they are received ~~((performing))~~ by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of ~~((their))~~ compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total ~~((figure will be rounded))~~ to the next higher whole number.

(12) Practice, preparation, and rehearsal time. If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

#### NEW SECTION

**WAC 192-310-080 When are performers in small performing arts industries who receive stipends not considered to be in employment? (RCW 50.04.275.)** (1) A person who is participating in a performance for an employer in subsection (2) of this section is not considered to be in employment if the person receives no remuneration other than a nominal stipend.

(2) This section only applies to employers that are classified in the North American industry classification system as theater companies, dinner theaters, dance companies, musical groups and musical artists, and museums. The employer may not employ more than three individuals during any portion of a day during a calendar year. If an organization employs no more than three individuals who regularly exceed half-time employment, it will be presumed to meet this test.

If an employer becomes ineligible during the course of a year, the employer must from that time forward until the end of the calendar year treat persons who receive only a nominal stipend as in employment.

(3) As used in this section, "participating in a performance" includes serving as an actor or actress, musician, lighting technician, costume designer, stagehand, or in performing other functions relating specifically to the performance.



(4) A stipend is nominal when it is a fixed sum of money which the employer pays periodically to defray incidental expenses involved in participating in a performance and which does not exceed the amount specified under WAC 192-100-500(5).

#### NEW SECTION

**WAC 192-310-090 When is "casual labor" exempt from unemployment insurance? (RCW 50.04.270.)** "Casual labor" that is not in the course of the employer's trade or business and does not promote or advance the employer's trade or business is not considered employment. This exemption only applies to services such as yard work or minor repair work which is performed for a private individual on nonbusiness property. Any employment which is treated as a business expense does not qualify for this exemption.

"Domestic service" is considered a separate exemption under RCW 50.05.160.

#### NEW SECTION

**WAC 192-310-095 When are musicians and entertainers exempt from unemployment insurance? (RCW 50.04.148.)** Musicians or entertainers who contract to perform specific engagements with a purchaser are not considered in employment when they provide no other duties for the purchaser and are not regularly and continuously employed by the purchaser. This exemption only applies if the primary business purpose of the purchaser is not music or entertainment. The music or entertainment provided must be incidental to the primary business activity of the purchaser. An example would be a tavern that periodically contracts with different bands to play live music.

AMENDATORY SECTION (Amending WSR 99-20-133, filed 10/6/99, effective 11/6/99)

**WAC 192-310-100 (~~Posting of notices by employers~~) What notices does the department require or recommend employers to post?** (Relating to RCW 50.20.140, 50.12.290, and 50.44.045.)(-)

(1) Employers who are responsible for unemployment insurance coverage of their employees must post and maintain printed notices to individuals who are employed by the employer. ~~((These notices inform the individual that this employer is liable for taxes under the Employment Security Act.~~

~~((4))~~) The notices provide information to individuals who may be unemployed about how to ~~((register for work, file claims for benefits, and rights to))~~ apply for benefits. The notices are to be posted in conspicuous places close to the actual location where the personal services are performed.

(2) The department will provide required notices to employers without charge. The department will send required notices to employers when they file a master application for a business license registering for unemployment insurance. The department will send updated notices to employers when there are substantive changes in the information.

(3) The department may also make recommendations of additional materials to post.

(4) A church, a convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches shall display in a conspicuous place a poster giving notice that its employees are not considered in employment for purposes of unemployment insurance. The department shall make these posters available without charge.

#### NEW SECTION

**WAC 192-310-150 Are corporate officers covered for unemployment insurance?** (1) For purposes of WAC 192-310-150 through 192-310-190:

(a) "Bona fide officer" means any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of a corporate officer;

(b) "Corporate officer" means an officer of a corporation as described or authorized in bylaws under RCW 23B.08.-400;

(c) "Exercise substantial control in the daily management of the corporation" means that the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

(d) "Nonpublic company" means a corporation that does not meet the definition of a public company;

(e) "Public company" means a corporation that has a class of shares registered with the Federal Securities and Exchange Commission as defined in RCW 23B.01.400;

(f) "Related by blood within the third degree" means the degree of kinship as computed according to the rules of the civil law. For example, if measured for descendants, it would include a person and that person's children, grandchildren, great grandchildren, brothers and sisters, and nephews and nieces. Alternatively, if measured for ancestors, it would include a person and that person's parents, grandparents, great grandparents, brothers and sisters, and aunts and uncles. Cousins are not related by blood within the third degree under the rules of the civil law and are not included. Legal adoptions or step-relatives are considered as if genetically related.

(g) "Related by marriage" means the union subject to legal recognition under the domestic relations laws of this state.

(2) Unless specifically exempted under WAC 192-310-160 or 192-310-180, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance to the same extent other employment is covered.

#### NEW SECTION

**WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage?** (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate

officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made when the corporation first registers with the department as an employer under RCW 50.12.070. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

## NEW SECTION

**WAC 192-310-170 How is unemployment insurance coverage of corporate officers reinstated?** (1) Unemployment insurance coverage of corporate officers who have been exempted from coverage may be reinstated under subsection (2) of this section by termination of an exemption or under subsection (3) of this section by election of the corporation.

(2)(a) An exemption for a corporate officer of a public corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(3) terminates immediately if the officer no longer qualifies for the exemption. For example, the worker may no longer be a bona fide elected or appointed corporate officer, may no longer be a shareholder of the corporation, may no longer exercise substantial control in the daily management of the corporation, or now has primary responsibilities which include the performance of manual labor.

(b) An exemption for a corporate officer of a nonpublic corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(4) terminates immediately if the officer no longer qualifies for the exemption for reasons other than revocation of a voluntary agreement to be exempted from coverage. For example, the worker may no longer be a bona fide elected or appointed corporate officer or may no longer exercise substantial control in the daily management of the corporation. However, the exemption does not terminate solely because the officer withdraws a voluntary agreement to be exempted from coverage.

(c) An exemption for a corporate officer of a nonpublic corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(5) terminates immediately if the officer no longer qualifies for the exemption because of a change in family relationship, such as a change in marital status. The exemption for all other corporate officers also terminates immediately if the entire group of corporate officers no longer qualifies under WAC 192-310-160(5), except to the extent some or all may remain exempt under WAC 192-310-160(4).

(d) A corporation must notify the department on a form approved by the department of a change in status in which an exemption terminates for a corporate officer who had been exempted. The notice is due by the time the next quarterly tax and wage report is due from the corporation. In addition, a corporate officer may notify the department that the exemption has terminated.

(e) A corporation is responsible for any taxes, penalties, and interest due if an exemption terminates and coverage is reinstated, regardless of whether the corporation provided notice to the department of the termination of the exemption.

(3) A corporation that has exempted one or more corporate officers may elect to reinstate coverage for one or more of those previously exempted corporate officers only under the following conditions:

(a) The window of opportunity to reinstate coverage only exists every five years, beginning in 2014. Corporations may reinstate coverage in calendar years 2014, 2019, and every five years thereafter.

(b) Reinstatement is only effective on January 1, 2014, January 1, 2019, and every five years thereafter. The corpo-

ration must send written notice to the department by January 15 for the reinstatement to be effective on January 1 of that year. If written notice is sent after January 15, reinstatement will not be allowed until the next window of opportunity five years thereafter. Reinstatement will not be applied retroactively, except for the period from January 1 to January 15 if notice is sent by January 15.

(c) Coverage will not be reinstated if the corporation committed fraud related to the payment of contributions within the previous five years, is delinquent in the payment of taxes at the time of the request to reinstate corporate officers, is currently assigned a tax rate for employers who are delinquent on taxes under WAC 192-320-035, or if the commissioner exercises his or her discretion to determine that there are related reasons why the corporation should not be allowed to reinstate coverage of corporate officers.

#### NEW SECTION

**WAC 192-310-180 Are corporate officers covered for unemployment insurance when the corporation has no other employees?** (1) If a corporation has no employees and all personal services are performed only by bona fide corporate officers, the corporation is not considered an "employer" or "employing unit" under RCW 50.04.080 and 50.04.090. Services of these corporate officers are not considered "services in employment" under RCW 50.04.165 or WAC 192-310-150 and are not covered for purposes of unemployment insurance unless they specifically elect coverage under subsection (2) of this section.

(2) A corporation that has no employees and in which all personal services are performed only by bona fide corporate officers may elect unemployment insurance coverage if it registers with the department under RCW 50.12.070, elects coverage under RCW 50.24.160, and complies with WAC 192-300-170. The election must cover at least two calendar years and is only effective upon the written approval of the commissioner. Once the election for coverage is approved, it may only be terminated effective January 1 after at least two calendar years and only if the corporation filed a written application for termination of coverage by January 15 of that year.

(3) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

#### NEW SECTION

**WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed?** (1) This section applies to:

(a) A corporate officer who owns ten percent or more of the outstanding stock of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the outstanding stock of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage as parent, stepparent, grandparent, spouse, child, brother, sister, stepchild, adopted child, or grandchild.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership of the percentage of stock increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

**WAC 192-320-020 How is the industry average calculated for rate years 2005, 2006, and 2007? ((—)) (RCW 50.29.025.)** (1) As used in this title:

(a) "NAICS" is an abbreviation for North American Industry Classification System;

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. It will be referred to as the "experience tax."

(c) "Industry average graduated social cost factor rate" is the average social tax rate for a particular industry. It will be referred to as the "social tax."

(2) When calculating the experience tax and social tax, the department will use the first four digits of the NAICS code of the industry being calculated.

**(3) Experience tax.**

(a) The department will calculate the experience tax as follows:

(i) A table will be prepared that contains each of the 40 rate classes;

(ii) For each rate class, we will multiply, total, and display the taxable payrolls for all qualified employers assigned to that rate class with the NAICS code being calculated, by the percentage assigned to that rate class;

(iii) We will total the tax rates for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) We will add fifteen percent to the result, and show the final amount as a percentage rounded to two decimal places.

(b) The experience tax must be at least 1.00 percent and not more than 5.4 percent.

**(4) Social tax.**

(a) The department will calculate the social tax as follows:

(i) The experience tax table will show the percentage of the social tax assigned to each of the 40 rate classes;

(ii) We will multiply, total, and display the total payroll in each industry rate class by the percentage of social tax assigned to that rate class;

(iii) We will total the social tax rate for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) We will add fifteen percent to the result, and show the final amount as a percentage rounded to two decimal places.

(b) The social tax for an industry cannot be higher than the percentage of social tax assigned to rate class 40.

(5) If there are no qualified employers in the four digit level of the NAICS code, we will calculate the rates using the corresponding three digit level and assign the result to the four digit level. If there are no qualified employers in the three digit level, we will calculate the rates using the corresponding two digit level and assign the result to both the three and four digit levels.

(6) This section applies to rate years 2005, 2006, and 2007.

#### NEW SECTION

##### **WAC 192-320-025 How are unemployment insurance tax rates determined for new employers? (RCW 50.29.025.)**

(1) Beginning in rate year 2008, unemployment insurance tax rates for new employers shall be based on the history factor of new employers over the last three fiscal years applied to the experience tax and the social cost factor tax for each industry. The history factor shall be ninety percent, one hundred percent, or one hundred fifteen percent, based on the experience of new employers over the last three years, and shall be calculated under RCW 50.29.025.

(2) As used in this section:

(a) "NAICS" is an abbreviation for North American Industry Classification System;

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "experience tax."

(c) "Industry average social cost factor rate" means the average social tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "social cost factor tax."

(d) "History factor" shall be ninety percent, one hundred percent, or one hundred fifteen percent, depending on the ratio of benefits charged and contributions paid in the last three fiscal years by employers who were not considered a "qualified employer" under WAC 192-320-030 or were not delinquent on taxes under WAC 192-320-035. It shall be computed annually and is not limited to a particular industry.

(3) When calculating the experience tax and social cost factor tax, the department will use the first four digits of the NAICS code of the industry being calculated.

(4) Experience tax.

(a) The department will calculate the experience tax as follows:

(i) A table will be prepared that contains each of the 40 rate classes;

(ii) For each rate class, the department will multiply, total, and display the taxable payrolls for all qualified employers assigned to that rate class with the NAICS code being calculated, by the percentage assigned to that rate class;

(iii) The department will total the tax rates for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

(b) The experience tax must be at least 1.00 percent and not more than 5.4 percent.

(5) Social cost factor tax.

(a) The department will calculate the social cost factor tax as follows:

(i) The experience tax table will show the percentage of the social cost factor tax assigned to each of the 40 rate classes;

(ii) The department will multiply, total, and display the total payroll in each industry rate class by the percentage of social cost factor tax assigned to that rate class;

(iii) The department will total the social cost factor tax rate for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

(b) The social cost factor tax for an industry cannot be higher than the percentage of social cost factor tax assigned to rate class 40.

(6) If there are no qualified employers in the four-digit level of the NAICS code, the department will calculate the rates using the corresponding three-digit level and assign the result to the four-digit level. If there are no qualified employers in the three-digit level, the department will calculate the rates using the corresponding two-digit level and assign the result to both the three-digit and four-digit levels.

#### NEW SECTION

##### **WAC 192-320-030 How are unemployment insurance tax rates determined for a current "qualified employer"?**

(1) A "qualified employer" means an employer who:

(a) Reported some employment in the twelve-month period beginning with April 1 of the second year preceding the computation date;

(b) Had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the July 1 computation date; and

(c) Was not delinquent on taxes under WAC 192-320-035.

(2) Unemployment insurance tax rates for a "qualified employer" are determined under RCW 50.29.025.

NEW SECTION

**WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes?** (1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1.

(3) This section does not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if the otherwise qualified domestic employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable.

(4) The department shall provide notice to the employer that he or she may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert in July, August, or September billing statements or in a notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

NEW SECTION

**WAC 192-320-040 When will the department recalculate employer tax rates? (RCW 50.29.080.)** (1) The department may, at its discretion, recalculate the tax rate for any employer if it determines, within three years of the July 1 computation date, that the rate as originally computed was erroneous.

(2) Except as provided in subsection (1) of this section, an employer must submit a written request for rate review or recalculation before the department will recalculate a rate. This does not apply if the department determines that the department's error caused an incorrect tax rate.

(3) The department will not recalculate a tax rate at the request of the employer more than once in a calendar year.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

**WAC 192-320-070 Conditions for relief of benefit charges due to a voluntary quit.** (1) ~~((For claims with an effective date prior to January 4, 2004, a contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.020(3) may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.020(4) and WAC 192-320-065.~~

~~(2) For claims with an effective date on or after January 4, 2004,))~~ A contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.021(3), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065.

~~((3))~~ **(2) Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same~~((;))~~; or the job location may have changed~~((;))~~ but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and

(i) Domestic violence which causes the claimant reasonably to believe that continued employment would jeopardize the safety of the claimant or any member of the claimant's immediate family.

~~((4))~~ **(3) Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20-050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

(a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;

(b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer(=) and the employer has failed to correct the hazards within a reasonable period of time;

(c) Employee skills no longer required for the job;

(d) Unreasonable hardship on the health or morals of the employee;

(e) Reductions in hours;

(f) Reduction in pay;

(g) Notification of impending layoff; and

(h) ~~((Such))~~ Other work-related factors ~~((as))~~ the commissioner ~~((may deem))~~ considers pertinent.

AMENDATORY SECTION (Amending WSR 00-05-066, filed 2/15/00, effective 3/17/00)

**WAC 192-330-100 Adjustments and refunds—Reduction of refund if wages reported in error—RCW 50.24.150.** (1) An employer may file a written request for refund of, or adjustment to, ~~((contributions))~~ incorrectly paid taxes, interest, or penalties within three years of the date they were paid. The commissioner may also make ~~((refunds or))~~ adjustments for incorrectly paid taxes, interest, or penalties within three years of the date they were paid using his/her own initiative.

(2) When the wages of an employee have been reported in error and the department has paid a claimant benefits based on those wages, any request for refund of the tax will be offset by the amount of benefits paid. If there is any refund of taxes due the employer, it will be reduced by the amount of benefits paid against the claim(s) and any associated wages.

(3) Refunds will not usually be issued to an ongoing, active business when the credit can be applied to subsequent quarterly reports. Refunds will be allowed for:

(a) Accounts that are no longer active;

(b) Duplicate payments of one thousand dollars or more;

(c) Cases where the business can prove financial hardship from lack of a refund;

(d) The incorrect payment is due to agency error; or

(e) Other incorrect payments of one hundred dollars or more, at the discretion of the department.

AMENDATORY SECTION (Amending WSR 00-05-065, filed 2/15/00, effective 3/17/00)

**WAC 192-340-010 Field audit expansion.** The department's audit expansion requirements are as follows:

(1) If underreported or overreported wages for employees ~~((originally reported and/or new workers))~~ are discovered ~~((in the audit year))~~ for the year being audited, the department may expand ~~((to subsequent year(s). Subsequent year(s) and/or quarter(s) means))~~ the audit to prior years within the limits of RCW 50.24.190 and to subsequent years up to the most recently completed calendar quarters where the tax and wages are reported.

(2) ~~((When the department feels there are facts that indicate that the employer has made a conscious effort to avoid~~

~~taxation, the audit period may be expanded within statutory limitations.~~

~~((3))~~ In the post-audit interview, it is the responsibility of the department to ensure that audit findings or exceptions are discussed and future reporting requirements are understood by the ~~((entity))~~ business being audited.

#### NEW SECTION

**WAC 192-340-020 How many auditors determine payroll and wage information which the employer fails to provide?** If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may use RCW 50.12.080 to determine payroll and wage information based on information otherwise available to the department. This may include information from labor market and economic analysis, information provided to other state or local agencies, and the best information otherwise available to the department.

#### WSR 07-20-126

#### PROPOSED RULES

#### DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

[Filed October 3, 2007, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-168.

Title of Rule and Other Identifying Information: New chapter 194-37 WAC, Energy independence.

Hearing Location(s): West side hearing: On November 9, 2007, at 10:00 a.m. - noon, at the Department of Community, Trade and Economic Development, Davis-Williams Building, 906 Columbia Street S.W., Olympia, WA; and east side hearing: On November 14, 2007, at 1:30 p.m. - 3:30 p.m., at the Spokane International Airport, Meeting Room, 9000 West Airport Drive, Spokane, WA.

Date of Intended Adoption: December 31, 2007.

Submit Written Comments to: Howard Schwartz, Department of Community, Trade and Economic Development, P.O. Box 43173, 906 Columbia Street S.W., Olympia, WA 98504-3173, e-mail [Howards@cted.wa.gov](mailto:Howards@cted.wa.gov), fax (360) 586-0049, by November 16, 2007.

Assistance for Persons with Disabilities: Contact Carolee Sharp, [carolees@cted.wa.gov](mailto:carolees@cted.wa.gov), by November 14, 2007, TTY (360) 586-0772.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes to adopt rules to facilitate the implementation of chapter 19.285 RCW, the Energy Independence Act, which codifies the November 2006 passage of voter Initiative 937. The statute directs the department of community, trade and economic development (CTED) to adopt rules that apply to qualifying electric utilities that are not investor-owned. The rules address the process, timelines and documentation needed to ensure the proper implementation of chapter 19.285 RCW. The rules include, but are not limited to, rules associated with a qualifying utility's development of conser-

vation targets; a qualifying utility's decision to pursue alternative compliance; and the format and content of reports required in this statute.

Reasons Supporting Proposal: RCW 19.285.080(2) requires the department to adopt rules to ensure the proper implementation of this chapter. The rules will provide additional clarity beyond that contained in the initiative to guide the utilities in their implementation of the statute, and to assist the Washington state auditor's office and independent third-party auditors with their compliance audits and the Washington attorney general's office with its enforcement role.

Statutory Authority for Adoption: Chapter 19.285 RCW.

Statute Being Implemented: Chapter 19.285 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of community, trade and economic development, governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Klumpp, CTED, Olympia, Washington, (360) 725-3113; Implementation: State Auditor's Office, Olympia, Washington, (360) 902-0370; and Enforcement: Office of the Attorney General, Olympia, Washington, (360) 753-6200.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small businesses are directly affected by the rule (or statute). None of the electric utilities subject to the rules meet the definition of a small business based on their number of employees or gross revenues. All but two are units of government (municipal utilities and public utility districts). The remaining two are cooperative utilities.

A cost-benefit analysis is not required under RCW 34.05.328. CTED is not included in the list of departments required to conduct a cost-benefit analysis.

October 3, 2007

Marie Sullivan, Director  
Government Relations

## Chapter 194-37 WAC

### ENERGY INDEPENDENCE

#### NEW SECTION

**WAC 194-37-010 Purpose and scope.** The purpose of this chapter is to implement the requirements of the Energy Independence Act, chapter 19.285 RCW.

#### NEW SECTION

**WAC 194-37-020 Applicability.** The provisions of this chapter apply to consumer-owned electric utilities that provide electrical service to more than twenty-five thousand retail customers in the state of Washington.

#### NEW SECTION

**WAC 194-37-030 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

#### NEW SECTION

**WAC 194-37-040 Definitions.** The definitions in chapter 19.285 RCW apply throughout this chapter. Some of those definitions are included here, in addition to rule-specific definitions, to assist in understanding this chapter.

(1) "Auditor" means:

(a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction, such as a public utility district formed under Title 54 RCW, a municipal electric utility formed under Title 35 RCW, or any other public entity authorized by law to sell electricity for retail use, the Washington state auditor's office or its designee;

(b) An independent auditor selected by a utility that is not under the jurisdiction of the state auditor, such as a cooperative formed under chapter 23.86 RCW or an electric mutual corporation or association formed under chapter 24.06 RCW, an independent auditor selected by such a utility.

(2) "Annual revenue requirement" means that portion of a utility's annual budget approved by its governing body for the target year that is intended to be recovered through retail electricity sales in the state of Washington in the target year, or as otherwise documented by the utility pursuant to WAC 194-37-150.

(3) "Average water generation" means the average megawatt-hours of generation from a hydroelectric project over a period of ten consecutive years or more, taking into account differences in water flows from year to year.

(4) "Biennial target" means a utility's biennial conservation target.

(5) "BPA" means the Bonneville Power Administration.

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Conservation calculator" means a spreadsheet or piece of software developed and maintained by the NWPPCC to approximate a utility's ten-year potential. The conservation calculator will use methodologies consistent with the most recently published *Power Plan*. It is available at [www.nwcouncil.org](http://www.nwcouncil.org).

(8) "Cost-effective" means, as defined in RCW 80.52.-030, that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(c) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the

costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource.

(9) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(10) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(11) "Department" means the department of community, trade, and economic development.

(12) "Distributed generation" means an eligible renewable resource where the facility or any integrated cluster of generating units has a generating capacity of not more than five megawatts. If several five-megawatt or smaller projects are located in the same immediate area but are owned or controlled by different developers, each qualifies as a separate, independent distributed generation project. For the purposes of this rule, an eligible resource or group of similar eligible resources cannot be subdivided into amounts less than five megawatts solely to be considered distributed generation.

(13) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where:

(i) The facility is located in the Pacific Northwest; or

(ii) The electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services (an eligible renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside the Pacific Northwest and remain eligible to count towards a utility's renewable resource target); or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to a hydroelectric generation project owned by one or more qualifying utilities (see definition of qualifying utility in chapter 19.285 RCW) and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional electricity generated in either case is not a result of new water diversions or impoundments.

(14) "Fifth power plan" means *The Fifth Northwest Electric Power and Conservation Plan* produced by the NWPCC. The power plan is available at [www.nwcouncil.org](http://www.nwcouncil.org).

(15) "Incremental hydropower" means the incremental amount of kilowatt-hours of electricity generated from a base or constant amount of water.

(16) "Integrated cluster" of eligible renewable resources means colocated projects owned or controlled by the same entity that feed into the same substation.

(17) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a utility to its Washington retail customers.

(18) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity, reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type,

geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(19) "NWPCC" means Pacific Northwest Electric Power and Conservation Planning Council also known as the Northwest Power and Conservation Council. Its calculation of avoided costs and publications are available at [www.nwcouncil.org](http://www.nwcouncil.org).

(20) "Pacific Northwest" means the area consisting of:

(a) The states of Oregon, Washington, and Idaho, the portion of the state of Montana west of the Continental Divide, and such portions of the states of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(b) Any contiguous areas, not in excess of seventy-five air miles from the area referred to in (a) of this subsection, which are a part of the service area of a rural electric cooperative customer served by the BPA on December 5, 1980, which has a distribution system from which it serves both within and without such region.

(21) "Qualified incremental hydropower efficiency improvements" means the installation or modification of equipment and structures, or operating protocols that increase the amount of electricity generated from the same amount of water. These may include rewinding of existing generators, replacing turbines with more efficient units and changing control systems to optimize electricity generation, and improvements to hydraulic conveyance systems that decrease head loss. They do not include additions to capacity by increasing pondage or elevation head, or diverting additional water into the project.

(22) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington.

(23) "Regional technical forum" or "RTF" means a voluntary advisory committee that reports to the executive director of the NWPCC and whose members are appointed by the NWPCC's chair.

(24) "Renewable energy credit" or "REC" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that megawatt-hour of electricity, and the certificate is verified by the Western Renewable Energy Generation Information System.

(25) "Renewable resource" means:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy;

(e) Landfill gas;

(f) Wave, ocean, or tidal power;

(g) Gas from sewage treatment facilities;

(h) Biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and



(i) Biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include:

- (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol;
- (ii) Black liquor by-product from paper production;
- (iii) Wood from old growth forests; or
- (iv) Municipal solid waste.

(26) "Substitute resource" means reasonably available electricity or generating facilities, of the same contract length or facility life as the eligible renewable resource the utility invested in to comply with chapter 19.285 RCW requirements, that otherwise would have been used to serve a utility's retail load in the absence of chapter 19.285 RCW requirements to serve that retail load with eligible renewable resources.

(27) "Target year" means the specific year for which a renewable energy target must be met.

(28) "Ten-year potential" means the ten-year cost effective conservation resource potential.

(29) "Utility" means an electric consumer-owned electric utility, as the term consumer-owned utility is defined in RCW 19.29A.010, that serves more than twenty-five thousand retail customers in the state of Washington. The number of customers served shall be based on data reported by a utility in Form EIA - 861, "Annual Electric Power Industry Report," filed with the Energy Information Administration, United States Department of Energy.

A consumer-owned electric utility whose number of retail customers grows beyond twenty-five thousand over the course of a year shall be subject to the requirements of this chapter, or per chapter 19.285 RCW shall become a qualifying utility, starting January 1 of the following year. All applicable target dates, per chapter 19.285 RCW will be delayed by the same number of years as there are between January 1, 2007, and the year in which the utility becomes a qualifying utility.

(30) "Weather-adjusted load" means load calculated after variations in peak and average temperatures from year to year are taken into account.

(31) "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is an independent, renewable energy data base for the region covered by the Western Interconnection. WREGIS creates renewable energy certificates, WREGIS certificates, for verifiable renewable generation from units that register in the data base. The department selects WREGIS as the renewable energy credit tracking system to issue verified RECs per RCW 19.285.030(17).

(32) "Year" means the twelve-month period commencing January 1 and ending December 31.

#### NEW SECTION

**WAC 194-37-050 Documentation and auditing timelines.** Utilities will maintain all records necessary to document their compliance with the Energy Independence Act, as described in WAC 194-37-070, 194-37-080, 194-37-090, 194-37-100, 194-37-120, 194-37-130, 194-37-140, 194-37-150, 194-37-160, 194-37-170, 194-37-180, 194-37-190, and

194-37-200. Utilities that are not under the jurisdiction of the Washington state auditor must be audited for compliance with the Energy Independence Act by an independent auditor at least every twenty-four months.

#### NEW SECTION

**WAC 194-37-060 Conservation reporting requirements.** Each utility shall submit an annual conservation report to the department by June 1 beginning in 2012. The conservation report shall document the utility's progress in meeting the conservation targets established in RCW 19.285.040 and shall include the following:

(1) A summary of the data the utility reports to the "planning, tracking and reporting system." The summary shall include total electricity savings by customer sector - residential, commercial, industrial, and agricultural, by production efficiencies, and by distribution efficiencies. To create this summary report, each utility will report their annual conservation achievements using the NWPCC's regional technical forum "planning, tracking and reporting system," or an alternative reporting system approved, in advance of the reporting year, by the department. Each utility can report using the default values embedded in the NWPCC's planning, tracking and reporting system or the utility may use its own inputs as documented per WAC 194-37-080 (8) and (9).

(2) If the utility counts towards its biennial target any electricity savings from local, regional, state, or federal market transformation programs, or local, state or federal codes or standards, the utility shall include copies of reports of the annual electricity savings for the utility's service territory as estimated and recorded by entities such as the department, the NWPCC, regional market transformation organizations, or the utility.

(3) A brief description of the methodology used to establish the utility's ten-year potential and biennial target to capture cost-effective conservation, including the share of this target to be captured by efficiency improvements in customer measures, and, if any, in distribution measures and production measures.

(4) The utility's total expenditures for conservation reported by customer conservation broken down by residential sector, commercial sector, industrial sector, and agricultural sector, and, if any, production efficiency and distribution efficiency.

(5) The most recent final audit report(s), if any, that evaluate(s) the utility's compliance with chapter 19.285 RCW and the information the utility reported per this chapter.

(6) In even years this report must include the following information categorized by customer conservation savings, and if any, total distribution efficiency savings, and total production efficiency savings:

(a) The utility's achievement in meeting its preceding biennial target; and

(b) The utility's current ten-year potential and biennial target.

#### NEW SECTION

**WAC 194-37-070 Documenting development of conservation targets.** (1) Ten-year potential. By January 1,

2010, each utility shall establish its ten-year cost-effective conservation resource potential. At least every two years thereafter, the public utility shall review and update this assessment for the subsequent ten-year period.

(2) Biennial target. In January 2010, and each two years thereafter, each utility shall establish and make public a biennial conservation target. The utility's biennial target shall be no less than its pro rata share of its ten-year potential.

(3) To document that the utility has established its ten-year potential and biennial target using methodologies consistent with those in the fifth power plan, the utility shall choose one of the documentation procedures set forth in subsection (4), (5), or (6) of this section, subject to the following conditions:

(a) If a utility uses the conservation calculator, or the modified conservation calculator to determine its customer conservation ten-year potential, it must use the utility analysis option per subsection (6) of this section to compute any additional ten-year potential for production and distribution efficiencies.

(b) If a portion of a utility's ten-year potential and biennial target includes calculations of efficiency gains from utility production and/or distribution efficiency measures, that portion of the ten-year potential or biennial target shall carry the stamp of a registered professional engineer licensed by the Washington department of licensing.

(c) If a utility includes production and/or distribution efficiencies in its target, then a utility's ten-year potential shall be the combined total of all cost effective achievable conservation in customer, distribution, and production efficiency measures available to that utility.

(d) A utility will hold a noticed public meeting, which provides an opportunity for public comment, regarding its assessment of conservation potential. The utility will adopt the ten-year potential and the two-year conservation targets by action of the utility's governing board in a public meeting. Such public meeting may be conducted separately, or as part of public meetings conducted for resource planning, budget setting, or other related processes. The public notice will indicate that the hearing agenda includes the establishment of the utility's ten-year and biennial targets.

(4) Conservation calculator option.

(a) A utility that chooses this option will document its calculation of its pro rata biennial conservation targets based on its share of regional annual megawatt-hour retail sales using the NWPCC's conservation calculator. If the NWPCC updates its conservation calculator within twelve months of an even-numbered year, a utility may choose to use the NWPCC's most recent conservation calculator or the immediately preceding version.

(b) Any utility that publishes a ten-year potential and biennial target with the customer sector portion of its biennial target equal to or higher than its target calculated using the conservation calculator has effectively documented its biennial target setting requirement for customer conservation.

(c) Starting in 2010, a utility that uses the conservation calculator to establish its ten-year potential and biennial target may deduct its biennial customer sector conservation achievement that meets the criteria in WAC 194-37-080(2)

from its share of the NWPCC's conservation resource potential.

(5) Modified conservation calculator option.

A utility that chooses this option will document consistency with the NWPCC's methodologies by modifying its ten-year potential and biennial target as identified through the use of the conservation calculator by making the following adjustments to the NWPCC's analysis in the NWPCC's most recently published power plan:

(a) Deduct conservation measures in the NWPCC's list not applicable to the utility's service territory;

(b) Add conservation measures, that are not included in the NWPCC's list, but are applicable to the utility's service territory;

(c) Modify the number or ratio of applicable units, such as the ratio of electrically heated houses or square footage of commercial space, if the utility has data surveys indicating that their data on applicable units varies from the NWPCC's;

(d) Increase and/or reduce the per unit incremental resource savings for conservation measures, relative to the NWPCC's data for savings per unit;

(e) Increase and/or reduce forecasted program costs;

(f) Increase or decrease retail sales growth rates; and

(g) Increase or decrease avoided distribution capacity cost savings.

(6) Utility analysis option.

(a) The NWPCC's analytical methodology for establishing the conservation resource potential and conservation targets for the Northwest power system is outlined in procedures (a)(i) through (xv) of this subsection. A utility that chooses this option will document that it established a ten-year potential using an analytical methodology consistent with these NWPCC procedures (a)(i) through (xv) of this subsection:

(i) Analyze a broad range of energy efficiency measures considered technically feasible;

(ii) Perform a life-cycle cost analysis of measures or programs, including the incremental savings and incremental costs of measures and replacement measures where resources or measures have different measure lifetimes;

(iii) Set avoided costs equal to a forecast of market prices, which represents the cost of the next increment of available and reliable power supply available to the utility for the life of the energy efficiency measures to which it is compared;

(iv) Calculate the value of the energy saved based on when it is saved. In performing this calculation, use time differentiated avoided costs to conduct the analysis that determines the financial value of energy saved through conservation;

(v) Conduct a total resource cost analysis that assesses all costs and all benefits of conservation measures regardless of who pays the costs or receives the benefits. The NWPCC identifies conservation measures that pass the total resource cost test as economically achievable;

(vi) Identify conservation measures that pass the total resource cost test, by having a benefit/cost ratio of one or greater as economically achievable;

(vii) Include the increase or decrease in annual or periodic operations and maintenance costs due to conservation measures;

(viii) Include deferred capacity expansion benefits for transmission and distribution systems in its cost-effectiveness analysis;

(ix) Include all nonpower benefits that a resource or measure may provide that can be quantified and monetized;

(x) Include an estimate of program administrative costs;

(xi) Discount future costs and benefits at a discount rate based on a weighted, after-tax, cost of capital for utilities and their customers for the measure lifetime;

(xii) Include estimates of the achievable customer conservation penetration rates for retrofit measures and for lost-opportunity (long-lived) measures. The NWPCC's twenty-year achievable penetration rates are eighty-five percent for retrofit measures and sixty-five percent for lost opportunity measures achieved through a mix of utility programs and local, state and federal codes and standards. The NWPCC's ten-year achievable penetration rates are sixty-four percent for nonlost opportunity measures and twenty-three percent for lost-opportunity measures; the weighted average of the two is a forty-six percent ten-year achievable penetration rate;

(xiii) Include a ten percent bonus for conservation measures as defined in 16 U.S.C. § 839a of the Pacific Northwest Electric Power Planning and Conservation Act;

(xiv) Analyze the results of multiple scenarios. This includes testing scenarios that accelerate the rate of conservation acquisition in the earlier years; and

(xv) Analyze the costs of estimated future environmental externalities in the multiple scenarios that estimate costs and risks.

(b) In addition to the requirements in subsection (6) of this section, the utility may document any variable listed in subsection (5) of this section to indicate that its conservation resource assessment methodology is consistent with the NWPCC's but results in unique conservation resource assessment outcomes.

#### NEW SECTION

**WAC 194-37-080 Documentation of conservation savings.** (1) The utility shall document:

(a) That it achieved its biennial conservation target;

(b) The total savings in customer efficiency measures; and

(c) If included in the target, the savings in the production and distribution sectors.

(2) A conservation measure or program counts towards a utility biennial target if it meets the following criteria:

(a) The conservation has a measure life of at least two years, or, if the measure life is less than two years the utility can verify that it has acquired the conservation for the entire biennium;

(b) It meets the definitions of conservation and cost effective as contained in WAC 194-37-040; and

(c) The NWPCC includes the measure or program in its power plan, or the measure or program is not identified by the NWPCC but it meets the definitions in RCW 19.285.030.

(3) The utility shall count the total first year savings of a conservation measure in the year during which either the measure was installed or the utility paid for it.

(4) Each utility may count towards its biennial conservation targets the proportionate share of savings resulting in its service territory from the following conservation efforts during the one biennium in which either the measure or program was placed in service or the utility paid for the measure:

(a) End-use savings from region-wide conservation projects that are centrally funded by BPA and for which the utility shared in the funding through their BPA rates.

(b) Savings from regional market transformation efforts if the NWPCC includes the program measures in its most recently published *Power Plan's* conservation resource potential or, as a newly emerging technology, the measure has yet to be included in the NWPCC's resource potential. Each utility will report a proportion of savings from these programs using established distribution methods, based on each utility's relative share of funding the regional market transformation effort through both direct funding and indirect funding through their BPA rates.

(c) Savings from improved federal minimum energy efficiency standards or Washington state building energy code improvements or improved state appliance codes and standards in the biennium in which they become effective, as proportionate to the utility's service territory. After that biennium, a utility may no longer include savings from those specific code and or standards in its next ten-year potential.

(5) Utilities may count savings from more stringent local building and/or local equipment codes and standards, including utility new service or connection standards, towards meeting their biennial conservation target in the biennium in which they become effective and in each biennium the local standards continue to be enforced and achieve incremental savings above minimum state energy codes or minimum federal energy standards.

(6) A utility cannot count the loss of load due to curtailments or matters outside of the utility's control (such as a facility shut-down) as achievement towards its conservation targets. However, such losses of load may change the level of current and future targets to the extent that they reduce the conservation potential available to the utility.

(7) The energy savings from an increase in distribution efficiencies are described, documented and counted under WAC 194-37-090. The energy savings from an increase in production efficiencies are described, documented and counted under WAC 194-37-100.

(8) Conservation savings from utility programs beginning in 2010 for measures for which the NWPCC and the regional technical forum have established per unit energy savings values will be based on the per unit savings set by the NWPCC's regional technical forum "planning, tracking and reporting system," unless the utility documents its variations in electricity saving estimates from the regional technical forum.

(9) Conservation savings from utility programs beginning in 2010 for custom measures shall be developed pursuant to the NWPCC's custom requirements available through the regional technical forum's "planning, tracking and reporting system" or through a similar analytical framework.

(10) A utility may count towards the utility's biennial end-use conservation target, twelve individual months' worth of conservation during the first twelve months of the high efficiency cogeneration facility's operations. The high efficiency cogeneration shall be owned and used by a retail electric consumer to meet that consumer's heat and power needs. In order to count this in its conservation target, the utility shall prepare the following documentation, certified by a registered professional engineer licensed by the Washington department of licensing:

(a) That the cogeneration system has a useful thermal energy output of no less than thirty-three percent of the total energy output; and

(b) An analysis that indicates the reduction in annual electricity consumption due to high efficiency cogeneration. This reduction is calculated as the net facility's annual electrical energy production times the ratio of the fuel chargeable to power heat rate of the cogeneration facility divided by the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine.

#### NEW SECTION

**WAC 194-37-090 Additional documentation of efficiency from distribution system loss reduction improvements, including peak demand management and voltage regulation.** (1) To the extent a utility can document a distribution system upgrade or management practice results in lower line losses and/or transformation losses, the avoided energy supply requirement to serve customers may be included in the utility's assessment of its ten-year resource potential and may count as conservation achievement towards the utility's biennial target.

(2) A utility that counts distribution system improvements in meeting its obligations under RCW 19.285.040 shall document these savings on either a component-performance basis or a system-analysis basis and shall indicate these savings distinctly from end-use and production efficiency savings.

(a) Component-performance basis. A utility that implements the component-performance basis for documenting distribution system improvements shall identify the components of the distribution system that were replaced, and the savings from replacement. The calculation shall be prepared under the direction of, and carry the stamp of a registered professional electrical engineer licensed by the Washington department of licensing.

(b) System-analysis basis. A utility that implements the system analysis basis for documenting conservation savings from distribution system improvements shall provide the following:

(i) For distribution system upgrades, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system being replaced or upgraded to the final system as installed.

(ii) For conservation voltage regulation, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system before and after the implementation of a voltage regulation program. The difference in

annual kilowatt-hour requirement at the utility point(s) of receipt (for distribution utilities) or net energy for load for generating utilities may be counted as conservation savings.

(iii) For peak demand management, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system before and after implementation of the peak demand management program. The change in net energy losses may be counted as conservation savings. Any net reduction in energy sales (economic curtailment) shall not be included in conservation savings.

(iv) The distribution flow analysis conducted for (b)(i), (ii), or (iii) of this subsection shall be prepared under the direction of, and carry the stamp of a registered professional electrical engineer licensed by the Washington department of licensing.

#### NEW SECTION

**WAC 194-37-100 Additional documentation of improved efficiency from production facilities.** (1) A utility will measure production efficiency improvements as the fraction of fuel savings achieved by the utility. The percentage reduction in fuel use per kilowatt-hour will be applied to the annual generation to determine the amount that is to be reported as conservation.

(2) A utility that includes production efficiency improvements in its annual report pursuant to RCW 19.285.070 shall document the electricity savings for each generating unit with the following information certified by a registered professional engineer licensed by the Washington state department of licensing:

(a) The first twelve-month electricity savings that the utility is counting towards its biennial target;

(b) A description of the efficiency improvements made to the generating unit;

(c) Annual fuel use for three preceding years, in quantity units and million British thermal units;

(d) Annual electrical output for three preceding years, in kilowatt-hours;

(e) The amount of capital investment and/or annual operating expenditure associated with the efficiency improvements;

(f) The cost-effectiveness analysis prepared by the utility in planning the efficiency improvement(s);

(g) Any post-retrofit analysis prepared by the utility in evaluating the performance and/or cost-effectiveness of the efficiency improvement(s);

(h) A simple calculation showing the fuel use per kilowatt-hour before the efficiency improvement, the fuel use per kilowatt-hour after the efficiency improvement, and the amount of energy conservation being reported as the product of the percentage improvement in fuel use per kilowatt-hour and the number of kilowatt-hours generated; and

(i) If efficiency improvements are installed at the same time as pollution control equipment that may itself affect efficiency, the utility may provide documentation of the effect of the efficiency improvements alone on the fuel consumption per kilowatt-hour of the production facility. In this situation, the utility shall provide a description of the changes made, the capital cost expended for both efficiency changes and pol-

lution control equipment, and an analysis of the impact of each on the fuel use per kilowatt-hour of the production facility.

(3) A utility shall not count towards its biennial conservation target the results from efficiency improvements made to hydropower facilities that are qualified incremental hydropower efficiency improvements and are counted towards any utility's renewable energy targets under RCW 19.285.040 or 19.285.050.

#### NEW SECTION

**WAC 194-37-110 Renewable resource energy reporting.** Each utility shall submit a renewable resource energy report to the department by June 1 of each year, beginning in 2012. Reporting requirements vary, as follows, depending upon how the utility elects to comply with chapter 19.285 RCW.

(1) Universal renewable energy reporting requirements. The renewable resource energy report shall include the following information:

(a) The utility's annual load for the two years preceding each renewable energy target year and the average load for those two years.

(b) The amount of megawatt-hours needed to meet the utility's annual renewable energy targets identified in RCW 19.285.040. These annual targets are established as a percentage of the utility's average retail load for the two years prior to the renewable energy target year: Three percent of each year 2012 through 2015; nine percent of each year 2016 through 2019; and fifteen percent for year 2020 and each year thereafter.

(c) The names of the eligible renewable resource facilities and/or the vintage (year in which associated power was generated) of renewable energy credits by generator that the utility owns or with which the utility has a contract dated no later than January 1 of the target year; and the estimated annual quantity (megawatt-hours) of eligible renewable resources or RECs that will be produced, or has been produced, through these resources or contracts to meet its annual targets.

(i) A utility may count any purchases of:

(A) Electricity from BPA that are generated by eligible renewable resources, for which no RECs have been created or, if RECs have been created, for which the RECs have been or will be retired by BPA on behalf of the utility; or

(B) RECs from the BPA generated by eligible renewable resources to meet all or any portion of its annual eligible renewable resource targets.

To document the annual amount of power supplied by BPA from eligible renewable resources, the utility may rely on BPA's determination of the portion of its power supply provided by eligible renewable resources during a calendar year for which no RECs have been created, or, if RECs have been created, that the RECs have been or will be retired by BPA on behalf of the utility.

(ii) The list of resources will identify any resource that both commenced operations after December 31, 2005, and meets the apprenticeship construction practice standards as

adopted by the council per WAC 194-37-120(1), thereby earning a 1.2 multiplier credit on its electricity output.

(iii) The list of resources will identify any resource that meets the definition of distributed generation and that the utility owns or contracts for the associated REC, thereby earning a 2.0 multiplier credit on the electricity output.

(d) A utility that does not meet the renewable energy requirements in RCW 19.285.040(2), the financial requirements in RCW 19.285.050, or the financial requirements in RCW 19.285.040 (2)(d) shall include the following information in its June 1 report of each year beginning in 2014:

(i) The quantity of eligible renewable resources acquired by December 31 of the target year;

(ii) RECs from the target year, the year prior or the year subsequent to the target year; or

(iii) The combination of (d)(i) and (ii) of this subsection.

(e) The most recent final audit report(s), if any, that evaluate(s) the utility's compliance with chapter 19.285 RCW and the information reported per this chapter.

(2) Renewable energy target reporting.

(a) A utility that meets the renewable energy requirements in RCW 19.285.040(2) shall include the following in its June 1 report of each year beginning in 2014.

(i) Demonstration that it acquired:

(A) Megawatt-hours of eligible renewable resources by December 31 of the target year;

(B) RECs produced during the target year, the year prior or the year subsequent to the target year; or

(C) Any combination of (a)(i)(A) and (B) of this subsection, in amounts sufficient to meet the percent of load target for the calendar year two years prior. The utility may demonstrate that it acquired RECs in the subsequent year to make up for any performance deficiency and for nonmaterial underestimates in load projections.

(ii) Documentation of the amount of megawatt-hours purchased or generated, the amount of WREGIS-certified RECs purchased and the names of the respective eligible renewable facilities that produced the associated power, specified by the year it was generated.

(b) The utility may, in addition, submit a copy of its fuel mix report, per chapter 19.29A RCW, for each target year.

(3) Resource cost reporting.

Each year that a utility does not meet the renewable energy target requirements in RCW 19.285.040, but meets the financial requirements in RCW 19.285.050, the utility shall include the following information in its June 1 report of that year:

(a) Its annual revenue requirement for the target year;

(b) The annual levelized delivered cost of its eligible renewable resource(s) reported separately for each resource;

(c) The annual levelized delivered cost of its substitute resources and the eligible renewable resource with which it is being compared;

(d) The total cost of renewable energy credits to be applied in the reporting year;

(e) The percentage of its annual revenue requirement invested in the incremental cost of eligible renewable resources and the cost of RECs; and

(f) The most current information required by WAC 194-37-160 used for this financial demonstration.

## (4) Nonload growing utility reporting.

Each year that a utility does not meet the renewable energy target requirements in RCW 19.285.040 (2)(a), but meets the financial requirements in RCW 19.285.040 (2)(d), the utility shall report to the department each June 1 its:

(a) Annual revenue requirement for the target year;

(b) Weather-adjusted load for each of three years prior to the target year;

(c) Delivered cost of its eligible renewable resource(s), RECs or a combination of both for the target year to be applied to the one percent of annual revenue requirement, reported separately for each resource;

(d) Quantity of megawatt-hours for each target year for which the utility:

(i) Commenced or renewed ownership of nonrenewable resources after December 7, 2006; or

(ii) Made electricity purchases from nonrenewable energy resources, incremental to its annual electricity purchases made or contracted for prior to December 7, 2006. Sources of power for daily spot market purchases are not counted; and

(e) List of RECs that the utility acquired, in addition to any RECs purchased in (c) of this subsection, to offset nonrenewable purchases listed in (d) of this subsection.

## (5) Reporting of uncontrollable events.

For any target year that a utility demonstrates to the auditor that it did not meet the annual renewable resource requirements in chapter 19.285 RCW due to events beyond the reasonable control of the utility per RCW 19.285.040 (2)(i), the utility shall summarize these events in its June 1 report to the department immediately following the target year.

NEW SECTION

**WAC 194-37-120 Documentation of renewable energy achievement.** Each utility shall provide the auditor access to contracts indicating purchases of or documentation indicating ownership of RECs and/or megawatt-hours from eligible renewable/ resources equal to or exceeding the annual percentage standard for the target year. The megawatt-hours from owned eligible renewable resources count towards the percentage annual renewable energy target as long as the associated nonpower attributes, or RECs, if any have been created, are not owned by a separate entity or have not been used in an optional pricing program. A utility's power purchase contract, for eligible renewable resources, provides documentation for this section if the contract specifies that the nonpower attributes, or RECs if any have been created, associated with the power from the eligible renewable resources have been acquired by the utility.

(1) Each utility that claims a 1.2 multiplier credit for the electricity output from an eligible renewable resource per RCW 19.285.040 (2)(h)(i) shall provide a copy of written documentation from the council that the facility met the apprenticeship labor standard of fifteen percent of the total labor hours used in its construction.

(2) A utility may provide a copy of documentation from the BPA indicating a quantity of power that BPA sold to the utility for the target year that was supplied by an eligible renewable resource.

(3) Each utility that claims a 2.0 multiplier credit for the electricity output from an eligible renewable resource per RCW 19.285.040 (2)(b) shall provide documentation that the REC applied in that year, associated with the distributed generation resource, is owned by the utility.

NEW SECTION

**WAC 194-37-130 Documentation of incremental hydropower.** (1) Utilities may count toward their annual renewable resource targets incremental power acquired from qualified incremental hydropower efficiency improvements made at the following facilities since 1999:

(a) Hydropower facilities in the Pacific Northwest owned by a qualifying utility where the new generation does not result in new water diversions or impoundments.

(b) Hydroelectric generation facilities in irrigation pipes and canals located in the Pacific Northwest, where the additional generation does not result in new water diversions or impoundments.

(2) The utility shall calculate renewable resource power from incremental hydropower as the increase in annual megawatt-hours of generation attributable to the qualified incremental hydropower efficiency improvements under average water generation.

(3) The increase in annual megawatt-hours of generation attributable to the qualified incremental hydropower efficiency improvements shall be documented by engineering studies or with before and after generation data. The documentation shall clearly explain:

(a) Where the facility is located;

(b) When the improvements were made;

(c) How the amount of generation in "average water generation" was calculated;

(d) What other factors may have caused an increase in electricity production and how the amount "attributable to the qualified improvements" was extracted from the total increase;

(e) How and why the "qualified improvements" increased hydropower production; and

(f) How the utility came to acquire the incremental output associated with the qualified improvements.

NEW SECTION

**WAC 194-37-140 Documentation of renewable resource financial path for no-load growth utilities.** For each year that a utility meets the renewable energy financial cost cap, associated with no load growth, identified in RCW 19.285.040 (2)(d), the utility must document the following by January 1:

(1) That it used a consistent methodology from year to year to weather-adjust its retail load;

(2) That its weather-adjusted load for the most recent prior year is lower than the third year prior;

(3) That it invested at least one-percent of its total annual revenue requirement in each target year on eligible renewable resources, RECs, or a combination of both;

(4) That it executed contracts, dated no later than January 1 of the target year, for power purchases of eligible renewable resources and/or RECs;

(5) The quantity of megawatt-hours for each target year for which the utility:

(a) Commenced or renewed ownership of nonrenewable resources after December 7, 2006; or

(b) Made electricity purchases from nonrenewable energy resources, incremental to its annual electricity purchases made or contracted for before December 7, 2006.

Sources of power for daily spot market purchases are not included in this calculation;

(6) The RECs the utility acquired, in addition to any RECs acquired for subsection (3) of this section, to offset nonrenewable power purchases listed in subsection (5) of this section; and

(7) Annual revenue requirement for the target year.

#### NEW SECTION

**WAC 194-37-150 Financial documentation of annual revenue requirement.** (1) For purposes of the report filed pursuant to RCW 19.285.070, a utility shall document its annual revenue requirement.

(2) A utility that uses a different basis for the determination of its annual revenue requirement for purposes of calculating what it expects to recover or actually recovers through retail electricity sales in the state of Washington in that year may use that number in the calculation of the cost cap and must provide documentation to support this alternative approach.

#### NEW SECTION

**WAC 194-37-160 Documentation of financial cost cap—Current information and timeline.** By January 1 of the first target year that a utility fulfills its renewable energy requirements under RCW 19.285.050, the utility shall select one of the following methodologies for calculating the incremental cost of all eligible renewable resources acquired thereafter by that utility:

(1) Annual update methodology. In each year that a utility fulfills its renewable energy requirements by complying with the cost cap identified in RCW 19.285.050 it must document its calculations no later than January 1 of the target year. The utility will use the most current information available to the utility within twelve months prior to the initial documentation of the cost cap pursuant to WAC 194-37-170 through 194-37-190. The utility will update this documentation in its June 1 report submitted pursuant to RCW 19.285.070. These annual updates of costs, based on the most current information available, apply to both the renewable resource and the substitute resource.

(2) Permanent one-time methodology. For each specific renewable resource investment, a utility shall perform a one-time calculation of the levelized incremental cost pursuant to WAC 194-37-170 through 194-37-190. The levelized incremental cost may be a single annual value or a stream of annual values. However, the levelized incremental cost, identified through this one-time analysis, shall remain unchanged over the life of the renewable resource after the initial calculation. The utility will include a determination of incremental cost for each renewable resource investment in its June 1 report submitted pursuant to RCW 19.285.070,

beginning in the year the utility complies with the cost cap identified in RCW 19.285.050.

#### NEW SECTION

**WAC 194-37-170 Documentation for financial path—Levelization of costs.** (1) Each utility must document its calculation of the levelized annual incremental cost of eligible renewable resources. Utilities are encouraged, but not obligated, to use the following methodology:

**Step 1:** Calculate the net present value of the cost of the utility's eligible renewable resource and substitute resource over an equivalent contract length or facility life.

**Step 2:** Calculate equal nominal values over the appropriate contract length or facility life that have a net present value equal to those calculated in Step 1, using the same discount rate.

**Step 3:** Calculate the annual difference between the levelized delivered cost for the eligible renewable resource and the substitute resource to determine the levelized incremental cost of the eligible renewable resource.

A utility that uses the annual update methodology must document the basis for any change to the levelization methodology used in a prior June 1 report to levelize the costs of an eligible renewable resource and its associated substitute resource.

(2) Regardless of the methodology chosen to levelize costs, utilities must document the basis for their chosen method for leveling costs.

(3) Utilities must document the basis for the discount rate used in its levelized cost calculations.

(4) Utilities must document how the discount rate used to perform the levelized cost calculations is consistent with the inflationary assumptions incorporated into the delivered cost projections for the eligible renewable resource and substitute resource.

(5) Utilities must document how the method and assumptions used to levelize delivered costs for the eligible renewable resource are consistent with those used to levelize the delivered cost of the associated substitute resource.

#### NEW SECTION

**WAC 194-37-180 Documentation of financial path—Delivered cost.** (1) The delivered cost of a resource includes all direct and indirect costs associated with that resource being delivered to the distribution system of a utility over the contract length or facility life of the delivered resource. Direct and indirect costs may include operating and capital expenses related to the delivered resource.

(2) Using the Uniform System of Accounts of the Federal Energy Regulatory Commission (FERC) as an illustration, the reported resource costs are expected to generally fall within, but not necessarily be limited to, the following cost accounts:

#### *Operating Expenses*

Accounts 500-557:

Production Expense

Account 565:

Wholesale Wheeling Expense

Accounts 920-935:	Administrative and General Expense
Account 408.1:	Taxes Other than Federal Income Taxes

*Capital Expenses*

Accounts 403-407:	Depreciation and Amortization Expense
Accounts 427-431:	Interest-Related Expenses

(3) A utility may include actual costs in order to equitably compare the costs of eligible renewable resources and substitute resources. This may include the actual costs of transmission, firming, shaping, integration, and project specific development costs.

(4) Utilities are encouraged to use the FERC system of accounts to document the delivered cost of resources. Regardless of the accounting convention used, utilities must document the delivered cost estimates for eligible renewable resources and their associated substitute resources in a manner consistent with generally accepted accounting standards.

NEW SECTION

**WAC 194-37-190 Documentation of financial path—Substitute resource and resource equivalence.** (1) In support of its annual filings to the department under RCW 19.285.070, utilities must document the type, availability, and cost of the reasonably available substitute resource used to calculate the incremental cost of an eligible renewable resource.

(a) In documenting the incremental cost under RCW 19.285.050 (1)(b), a utility is encouraged to identify substitute resources using its integrated resource planning process, if one is available. If a utility elects to choose a substitute resource from a different source other than its most recently published integrated resource plan, it must document the basis for this decision. Documentation of the cost of a substitute resource may include, but is not limited to, formal offers for the sale of electricity, or published cost projections from reputable third-party sources.

(b) In its selection of a substitute resource, the utility shall develop documentation demonstrating that the substitute resource satisfies the requirements set forth in RCW 19.285.050. The requirements are:

(i) Equivalence between the eligible renewable resource and the substitute resource by demonstrating the equivalence in the amount of energy produced by each resource;

(ii) Equivalence between the eligible renewable resource and the substitute resource by demonstrating the same contract length or facility life of each resource;

(iii) The substitute resource is reasonably available to the utility; and

(iv) The substitute resource does not qualify as an eligible renewable resource.

(c) Only supply-side substitute resources shall be used by utilities in the calculation of the incremental cost of eligible renewable resources.

(d) When the renewable requirements under RCW 19.285.040(2) result in a utility having resources in excess of its load, the utility may use that excess resource or a forecast of projected market prices as the substitute resource if the substitute resource requirements of (b) of this subsection are otherwise satisfied. The utility will document the resale revenues, net of transaction costs, received through the sale of excess resources or the purchase price for the sale of the excess facility sold as a result of the requirement to acquire eligible renewable resources. A utility that uses a value other than the documented resale revenue in the determination of the levelized delivered cost of the substitute resource must provide documentation to support this alternative approach.

(e) A utility may use foregone power purchases from BPA, plus any billing credit obtained for reducing its purchases from BPA, as the basis for the cost of the substitute resource if:

(i) The substitute resource requirements of (b) of this subsection are otherwise satisfied;

(ii) It is entitled under its BPA power sales contract to have the BPA meet its net power requirements for the expected life of an eligible renewable resource or eligible renewable resource purchase; and

(iii) As a result of meeting the renewable requirements under RCW 19.285.040(2), it foregoes part of its BPA entitlement in order to obtain that eligible renewable resource.

(2) For an eligible renewable resource acquired prior to the passage of chapter 19.285 RCW, November 7, 2006, a utility must support the selection of the related substitute resource used in the determination of the incremental cost under RCW 19.285.050 with documentation that was available at the time of the utility's decision to acquire the eligible renewable resource. If no such documentation is available, the incremental cost of an eligible renewable resource acquired prior to the passage of chapter 19.285 RCW will be assumed equal to zero.

NEW SECTION

**WAC 194-37-200 Financial documentation path using renewable energy credits.** A utility may elect to invest in RECs to meet any portion of, or the entirety of, each annual renewable resource target in RCW 19.285.040(2) or 19.285.050(1). If the cost of the RECs and the incremental cost of acquired renewable resources, as documented according to WAC 194-37-150 through 194-37-190, for any one year meets or exceeds four percent of the utility's annual revenue requirement, the utility shall document that the utility achieved the four percent cost cap alternative compliance path in RCW 19.285.050(1). The documentation must include copies of its WREGIS RECs, copies of purchase contracts, and its annual revenue requirement.



**WSR 07-20-127**  
**PROPOSED RULES**  
**NOXIOUS WEED**  
**CONTROL BOARD**

[Filed October 3, 2007, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-13-030.

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties. The board is proposing to amend the state noxious weed list.

Hearing Location(s): Washington Cattlemen's Association, 1301 North Dolarway Road, Ellensburg, WA, on November 14, 2007, at 1:30 p.m.

Date of Intended Adoption: November 20, 2007.

Submit Written Comments to: Cindy Orr, P.O. Box 42560, Olympia, WA 98504, e-mail [corr@agr.wa.gov](mailto:corr@agr.wa.gov), fax (360) 902-2094, by November 7, 2007.

Assistance for Persons with Disabilities: Contact Cindy Orr by November 7, 2007, TTY (360) 725-5764.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The state noxious weed list provides the basis for noxious weed control efforts for county weed control boards, weed districts, and other entities.

This proposal amends chapter 16-750 WAC by:

(1) Adding three new weed species to the A list (ricefield bulrush, European hawkweed, and variable-leaf milfoil) and one new weed species to the C list (common hawkweed);

(2) Deleting one weed species from rule (hedgearsley);

(3) Changing two weed species from the B list to the A list (common cordgrass and smooth cordgrass);

(4) Changing three weed species from the C list to the B list (butterfly bush, poison-hemlock, and common reed (non-native genotypes));

(5) Changing two weed species from the A list to the B list (buffalobur and lawnweed); and

(6) Changing the designation of five class B weeds (wild chervil, sulfur cinquefoil, orange hawkweed, policeman's helmet, and rush skeletonweed).

Reasons Supporting Proposal: Noxious weeds are non-native, invasive species that are difficult to control and are destructive to Washington's agriculture and natural resources. Once established, noxious weeds can colonize our croplands, rangelands, forests, parks, wetlands, estuaries, and waterways, causing economic and ecological damage. RCW 17.10.080 requires the Washington state noxious weed control board to adopt a state noxious weed list each year. The purpose of the state weed list is to limit economic loss and adverse effects to Washington's agricultural, natural, and human resources due to the presence and spread of noxious weeds in the state.

Proposed changes are based on written findings, current county and state specific information, known infestations, potential spread, distribution, potential impact, and the weed list classification A, B, and C categories as defined in WAC 16-750-003.

Statutory Authority for Adoption: Chapter 17.10 RCW.  
 Statute Being Implemented: Chapter 17.10 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state noxious weed control board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Alison Halpern, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-2082.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. An analysis of the economic effects of the proposed rule amendments for the two *Spartina* species demonstrates that the changes will not be more than a minor cost on small businesses involved with those particular species and, therefore, an SBEIS is not required. Net economic impact of the other proposed changes on small businesses would be negligible. Changing butterfly bush from a class C to a class B noxious weed does not forbid its sale. Variable-leaf milfoil is currently sold by fewer than 10% of the industry and its listing as a class A does not forbid its sale. The remaining proposed additions to the weed list (ricefield bulrush, common hawkweed, and European hawkweed) are not sold in the trade. The two other noxious weeds (poison-hemlock and common reed) being changed from class C to class B noxious weeds are already county-selected for control. Changing the designations of four class B noxious weeds (policeman's helmet, sulfur cinquefoil, orange hawkweed, rush skeletonweed) in select counties would have negligible, if any, effects on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state noxious weed control board is not one of the agencies listed in this section.

October 3, 2007

Alison Halpern

Acting Executive Secretary

AMENDATORY SECTION (Amending WSR 05-24-026, filed 11/30/05, effective 12/31/05)

**WAC 16-750-005 State noxious weed list—Class A noxious weeds.**

<b>Common Name</b>	<b>Scientific Name</b>
bean-caper, Syrian	<i>Zygophyllum fabago</i>
blueweed, Texas	<i>Helianthus ciliaris</i>
broom, Spanish	<i>Spartium junceum</i>
<del>((buffalobur</del>	<del><i>Solanum rostratum</i> </del>
<u>bulrush, ricefield</u>	<u><i>Schoenoplectus mucronatus</i></u>
clary, meadow	<i>Salvia pratensis</i>
<u>cordgrass, common</u>	<u><i>Spartina anglica</i></u>
cordgrass, dense flower	<i>Spartina densiflora</i>
cordgrass, salt meadow	<i>Spartina patens</i>
<u>cordgrass, smooth</u>	<u><i>Spartina alterniflora</i></u>
crupina, common	<i>Crupina vulgaris</i>

<b>Common Name</b>	<b>Scientific Name</b>	<b>Common Name</b>	<b>Scientific Name</b>
flax, spurge	<i>Thymelaea passerina</i>	mustard, garlic	<i>Alliaria petiolata</i>
four o'clock, wild	<i>Mirabilis nyctaginea</i>	nightshade, silverleaf	<i>Solanum elaeagnifolium</i>
goatsrue	<i>Galega officinalis</i>	primrose-willow, floating	<i>Ludwigia peploides</i>
<u>hawkweed, European</u>	<u><i>Hieracium sabaudum</i></u>	sage, clary	<i>Salvia sclarea</i>
hawkweed, yellow devil	<i>Hieracium floribundum</i>	sage, Mediterranean	<i>Salvia aethiopis</i>
hogweed, giant	<i>Heracleum mantegazzianum</i>	spurge, eggleaf	<i>Euphorbia oblongata</i>
hydrilla	<i>Hydrilla verticillata</i>	starthistle, purple	<i>Centaurea calcitrapa</i>
johnsongrass	<i>Sorghum halepense</i>	sweetgrass, reed	<i>Glyceria maxima</i>
knapweed, bighead	<i>Centaurea macrocephala</i>	thistle, Italian	<i>Carduus pycnocephalus</i>
knapweed, Vochin	<i>Centaurea nigrescens</i>	thistle, milk	<i>Silybum marianum</i>
kudzu	<i>Pueraria montana var. lobata</i>	thistle, slenderflower	<i>Carduus tenuiflorus</i>
( <u>lawnweed</u>	<u><i>Soliva sessilis</i></u> )	velvetleaf	<i>Abutilon theophrasti</i>
<u>milfoil, variable-leaf</u>	<u><i>Myriophyllum heterophyllum</i></u>	woad, dyers	<i>Isatis tinctoria</i>

AMENDATORY SECTION (Amending WSR 06-24-056, filed 12/4/06, effective 1/4/07)

**WAC 16-750-011 State noxious weed list—Class B noxious weeds.**

		<b>Will be a "Class B designate" in all lands lying within:</b>	
<b>Name</b>			
(1)	alyssum, hoary <i>Berteroa incana</i>	(a)	regions 1, 2, 5, 6, 8, 9, 10
		(b)	region 3, except Okanogan County
		(c)	Okanogan County, of region 3, except Ranges 29 through 31 East of Townships 37 through 40 North
		(d)	Adams and Whitman counties of region 7.
(2)	arrowhead, grass-leaved <i>Sagittaria graminea</i>	(a)	regions 1, 3, 4, 6, 7, 8, 9, 10
		(b)	region 2 except Lake Roesiger, Lake Serene, Lake Loma and Echo Lake in Snohomish County
		(c)	region 5 except Mason Lake in Mason County.
(3)	blackgrass <i>Alopecurus myosuroides</i>	(a)	regions 1, 2, 3, 5, 6, 8, 9, 10
		(b)	Ferry, Stevens, Pend Oreille counties of region 4
		(c)	Adams County of region 7.
(4)	blueweed <i>Echium vulgare</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9, 10
		(b)	region 7 except for an area starting at the Stevens County line on SR 291 south to the SR 291 bridge over the Little Spokane River, thence upstream along the Little Spokane River to the first Rutter Parkway Bridge; thence south along the Rutter Parkway to the intersection of Rutter Parkway and Indian Trail Road; thence southerly along Indian Trail Road to a point three miles south (on section line between sections 22 and 27, T-26N, R-42E); thence due west to a point intersecting the line between Ranges 41 and 42; thence north along this line to a point 1/4 mile south of Charles Road; thence northwesterly parallel to Charles Road to a point 1/4 miles south of the intersection of Charles Road and West Shore Road; thence northerly along West Shore Road to the Spokane River (Long Lake); thence southeasterly along the Spokane River to the point of beginning.
(5)	broom, Scotch <i>Cytisus scoparius</i>	(a)	regions 3, 4, 6, 7, 9, 10.

		<b>Will be a "Class B designate" in all lands lying within:</b>	
<b>Name</b>			
(6)	bryony, white <i>Bryonia alba</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
		(b)	region 7 except Whitman County
		(c)	Franklin County of region 10.
(7)	<u>buffalobur</u> <i>Solanum rostratum</i>	(a)	<u>region 1</u>
		(b)	<u>Island, San Juan, and Snohomish counties of region 2</u>
		(c)	<u>Okanogan County of region 3</u>
		(d)	<u>Pend Oreille and Stevens counties of region 4</u>
		(e)	<u>Grays Harbor, King, and Kitsap counties of region 5</u>
		(f)	<u>Kittitas and Yakima counties of region 6</u>
		(g)	<u>Adams and Spokane counties of region 7</u>
		(h)	<u>Lewis County of region 8</u>
		(i)	<u>Benton and Yakima counties of region 9</u>
		(j)	<u>Walla Walla County of region 10.</u>
(8)	bugloss, common <i>Anchusa officinalis</i>	(a)	regions 1, 2, 3, 5, 6, 8, 9, 10
		(b)	region 4 except Stevens and Spokane counties
		(c)	Lincoln, Adams, and Whitman counties of region 7.
<del>((8))</del> (9)	bugloss, annual <i>Anchusa arvensis</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
		(b)	Lincoln and Adams counties
		(c)	Whitman County except ranges 43 through 46 East of Townships 16 through 20 North.
<del>((9))</del> (10)	<u>butterfly bush</u> <i>Buddleja davidii</i>	(a)	<u>Pend Oreille County of region 4</u>
		(b)	<u>Grays Harbor County, and that portion of Thurston County lying below the ordinary high-water mark of the Nisqually River in region 5</u>
		(c)	<u>Kittitas County of region 6</u>
		(d)	<u>Lincoln County of region 7.</u>
(11)	camelthorn <i>Alhagi maurorum</i>	(a)	regions 1, 2, 3, 4, 5, 7, 8, 9
		(b)	region 6 except those portions of Sections 23, 24, 25, and 29 through 36, T16N, R27E, W.M. lying outside Intercounty Weed District No. 52 and except Sections 1 through 12, T15N, R27E, W.M. in Grant County and except the area west of Highway 17 and north of Highway 26 in Adams County
		(c)	Franklin, Columbia, Garfield, and Asotin counties of region 10
		(d)	an area beginning at the Washington—Oregon border at the southwest portion of section 5, R32E, T6N, then north to the northwest corner of section 3, R32E, T7N, then east to the northeast corner of section 3, R36E, T7N, then south to southeast portion of section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning.
<del>((10))</del> (12)	carrot, wild <i>Daucus carota</i>	(a)	regions 3, 7 (except where intentionally cultivated)
		(b)	Spokane and Ferry counties of region 4 (except where intentionally cultivated)
		(c)	region 6, except Yakima County (except where intentionally cultivated)
		(d)	region 9, except Yakima County (except where intentionally cultivated)

		Will be a "Class B designate" in all lands lying within:	
Name			
		(e)	region 10, except Walla Walla County (except where intentionally cultivated.
<del>((11))</del> (13)	catsear, common <i>Hypochaeris radicata</i>	(a)	regions 3, 4, 6, 7, 10
		(b)	region 9 except Klickitat County.
<del>((12))</del> (14)	chervil, wild <i>Anthriscus sylvestris</i>	(a)	regions 1, 3, 4, <del>5</del> , 6, 7, 9, 10
		(b)	<del>((region 5 except those portions of Thurston County within T15, 16, 17N, R2, 3, 4W</del>
		(e))	region 2 except Guemes Island in Skagit County
		<del>((14))</del> (c)	region 8 except Clark County.
<del>((13))</del> (15)	cinquefoil, sulfur <i>Potentilla recta</i>	(a)	regions 1, 3, 8, 10
		(b)	region 2 except Skagit County
		(c)	region 4 except Stevens, Ferry, and Pend Oreille counties
		(d)	region 5 except Thurston <del>((and Pierce counties))</del> <u>County</u>
		(e)	region 6 except Yakima County
		(f)	region 7 except Spokane County
		(g)	region 8 except Lewis County
		(h)	region 9 except Klickitat County.
<del>((14))</del>	reedgrass, smooth <i>Spartina alterniflora</i>	(a)	regions 1, 3, 4, 5, 6, 7, 9, 10
		(b)	region 2 except Padilla Bay of Skagit County
		(e)	region 8 except bays and estuaries of Pacific County.
(15)	reedgrass, common <i>Spartina anglica</i>	(a)	regions 1, 3, 4, 5, 6, 7, 8, 9, 10
		(b)	region 2 except bays and estuaries of Skagit and Island counties and except bays and estuaries north of Everett in Snohomish County.)
(16)	daisy, oxeye <i>Leucanthemum vulgare</i>	(a)	regions 7, 10
		(b)	region 9 except those areas lying within Klickitat and Yakima counties west of Range 13 East
		(c)	region 6 except those areas lying within Yakima and Kittitas counties west of Range 13 E.
(17)	elodea, Brazilian <i>Egeria densa</i>	(a)	regions 3, 4, 6, 7, 9, 10
		(b)	Lewis County of region 8
		(c)	Clallam County of region 1
		(d)	King County of region 5, except lakes Washington, Sammamish, Union and Fenwick.
(18)	fanwort <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10
		(b)	region 8 except T8N, R3W of Cowlitz County.
(19)	fennel, common <i>Foeniculum vulgare</i> (except var. <i>azoricum</i> )	(a)	regions 3, 4, 6, 7, 8, 9, 10
		(b)	region 1 except the incorporated areas of Port Townsend
		(c)	region 2 except the incorporated areas of Anacortes and Mount Vernon
		(d)	region 5 except King and Kitsap counties.
(20)	fieldcress, Austrian <i>Rorippa austriaca</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
		(b)	regions 7 and 10 except within the Palouse River Canyon from Big Palouse Falls to the Snake River.
(21)	floating heart, yellow <i>Nymphoides peltata</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 9, 10
		(b)	region 4 except the Spokane River between Long Lake Dam and Nine Mile Dam.

		Will be a "Class B designate" in all lands lying within:	
(22)	Name		
	gorse <i>Ulex europaeus</i>	(a)	regions 1, 3, 4, 6, 7, 9, 10
		(b)	Skagit, Island, and Whatcom counties of region 2
		(c)	Thurston, Kitsap, Pierce, and King counties of region 5
		(d)	Wahkiakum, Clark, Skamania, Cowlitz, and Lewis counties of region 8.
(23)	hawkweed, mouseear <i>Hieracium pilosella</i>	(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10
		(b)	region 5 except Thurston County
		(c)	Thurston County lying within T17N, R1W, S31; T16N, R2W, S30 W1/2; T16N, R3W, S25, SE1/4; T16N, R3W, S36, N1/2; T16N, R2W, S31, NW1/4.
(24)	hawkweed, orange <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, 6, 9, 10
		(b)	Skagit County of region 2
		(c)	Ferry County of region 4
		(d)	<u>Pierce</u> , Thurston and King counties of region 5
		(e)	Lincoln and Adams counties of region 7
		(f)	Lewis County of region 8.
(25)	hawkweed, polar <i>Hieracium atratum</i>	(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10
		(b)	region 5 outside the boundaries of Mt. Rainier National Park.
(26)	hawkweed, queen-devil <i>Hieracium glomeratum</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 9, 10
		(b)	Ferry County of region 4.
(27)	hawkweed, smooth <i>Hieracium laevigatum</i>	(a)	regions 1, 3, 4, 5, 6, 7, 8, 9, 10
		(b)	San Juan, Island, and Skagit counties of region 2.
(28)	hawkweed, yellow <i>Hieracium caespitosum</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 10
		(b)	region 4 except Stevens and Pend Oreille counties
		(c)	region 9 except sections 32, 33 and 34 of T6N, R12E, and sections 4, 5, 6, and 7 of T5N, R12E, and section 12 of T5N, R11E, of Klickitat County.
(29)	<del>((hedgeparsley <i>Torilis arvensis</i></del>	<del>(a)</del>	<del>regions 1, 2, 3, 4, 5, 6, 7, 8, 10</del>
		<del>(b)</del>	<del>Yakima, Benton, Franklin counties</del>
		<del>(c)</del>	<del>Klickitat County except those lands lying within T4N, R10E, R11E, R12E, R13E, R14E; T3N, R10E, R11E, R12E, R13E; T2N, R12E, R13E.</del>
<del>(30))</del>	helmet, policeman's <i>Impatiens glandulifera</i>	(a)	regions 1, 3, 4, 6, 7, 8, 9, 10
		(b)	region 2 except Whatcom County
		(c)	region 5 except <del>((Pierce and))</del> Thurston <del>((counties))</del> <u>County</u> .
<del>((31))</del> <u>(30)</u>	herb-Robert <i>Geranium robertianum</i>	(a)	regions 3, 4, 6, 7, 9, 10
<del>((32))</del> <u>(31)</u>	houndstongue <i>Cynoglossum officinale</i>	(a)	Kittitas County of region 6
		(b)	Douglas and Chelan counties of regions 3 and 6.
<del>((33))</del> <u>(32)</u>	indigobush <i>Amorpha fruticosa</i>	(a)	regions 1, 2, 3, 4, 5, 6
		(b)	regions 7 and 10 except within 200 feet of the Snake River from Central Ferry downstream
		(c)	regions 8, 9, and 10 except within 200 feet of the Columbia River.
<del>((34))</del> <u>(33)</u>	knapweed, black <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 7, 9, 10

Name	Will be a "Class B designate" in all lands lying within:
<del>((35))</del> <u>(34)</u> knapweed, brown <i>Centaurea jacea</i>	(b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties (c) region 6 except Kittitas County (d) region 8 except Clark County. (a) regions 1, 2, 3, 4, 7, 9, 10 (b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties
<del>((36))</del> <u>(35)</u> knapweed, diffuse <i>Centaurea diffusa</i>	(c) region 6 except Kittitas County (d) region 8 except Clark County. (a) regions 1, 2, 5, 8 (b) Grant County lying in Townships 13 through 16 North, Ranges 25 through 27 East; Townships 17 and 18 N., Ranges 25 through 30 East; Townships 19 and 20 North, Ranges 29 and 30 East; T21N, R23E, Sections 1 through 30; T21N, R26E., Sections 5, 6, 7, 8, 17, and 18; East 1/2 Township 21N, Range 27E.; T21N, Ranges 28 through 30 E; those portions of Townships 22 through 28N, Ranges 28 through 30 E.; those portions of Township 22 through 28N., Ranges 23 through 30E. lying in Grant County; all W.M.
<del>((37))</del> <u>(36)</u> knapweed, meadow <i>Centaurea jacea x nigra</i>	(c) Adams County except those areas within T15N, R36E, Section 36; T15N, R37E, Sections 22, 26, 27, 28, 31, 32, 33 and 34; T15N, R37E, western half of Sections 23, 24 and 25; T15N, R38E, Sections 2, 10, 11, 14, 15, 19 and 20; T16N, R38E, Sections 34 and 35; T17N, R37E, Sections 5 and 6 (d) Franklin County of regions 9 and 10. (a) regions 1, 2, 3, 4, 7, 9, 10 (b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties
<del>((38))</del> <u>(37)</u> knapweed, Russian <i>Acroptilon repens</i>	(c) region 6 except Kittitas County (d) region 8 except Clark County. (a) regions 1, 2, 5, 7, 8 (b) region 4 except that area lying within the boundaries of the Colville Indian Reservation within Ferry County
<del>((39))</del> <u>(38)</u> knapweed, spotted <i>Centaurea stoebe</i>	(c) Adams County of region 6 except for the area west of Highway 17 and North of Highway 26 (d) Intercounty Weed District No. 52 (e) region 10 except Franklin County. (a) regions 1, 2, 3, 5, 6, 9 (b) Ferry County of region 4 (c) Adams and Whitman counties of region 7 (d) region 8, except that portion of Lewis County below the ordinary high watermark of the Tilton River from Hwy. 508 to Lake Mayfield

Name		Will be a "Class B designate" in all lands lying within:	
		(e)	region 10 except Garfield County.
<del>((40))</del> (39)	knotweed, Bohemian <i>Polygonum bohemicum</i>	(a)	Kittitas County of region 6
		(b)	Chelan and Douglas counties of regions 3 and 6
		(c)	Pend Oreille County of region 4.
<del>((41))</del> (40)	knotweed, giant <i>Polygonum sachalinense</i>	(a)	Kittitas County of region 6
		(b)	Pend Oreille County of region 4.
<del>((42))</del> (41)	knotweed, Himalayan <i>Polygonum polystachyum</i>	(a)	Kittitas County of region 6
		(b)	Pend Oreille County of region 4
		(c)	Lewis County of region 8.
<del>((43))</del> (42)	knotweed, Japanese <i>Polygonum cuspidatum</i>	(a)	Kittitas County of region 6
		(b)	Chelan and Douglas counties of regions 3 and 6
		(c)	Pend Oreille County of region 4.
<del>((44))</del> (43)	kochia <i>Kochia scoparia</i>	(a)	Regions 1, 2, 5, 8
		(b)	Pend Oreille County of region 4
		(c)	Kittitas County of region 6.
<del>((45))</del> (44)	laurel, spurge <i>Daphne laureola</i>	(a)	regions 3, 4, 6, 7, 8, 9, 10
		(b)	San Juan, Snohomish and Skagit counties of region 2
		(c)	Grays Harbor and Mason counties of region 5.
(45)	<u>lawnweed <i>Soliva sessilis</i></u>	(a)	<u>regions 1, 3, 4, 6, 7, 8, 9, 10</u>
		(b)	<u>region 2 except Snohomish County</u>
		(c)	<u>region 5 except King and Thurston counties.</u>
(46)	lepyrodiclis <i>Lepyrodiclis holosteoides</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9, 10
		(b)	region 7 except an area within Whitman County east of the Pullman—Wawawai Road from Wawawai to Pullman and south of State Highway 270 from Pullman to Moscow, Idaho.
(47)	loosestrife, garden <i>Lysimachia vulgaris</i>	(a)	regions 1, 2, 3, 4, 6, 7, 8, 9, 10
		(b)	region 5 except King County
		(c)	Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line.
(48)	loosestrife, purple <i>Lythrum salicaria</i>	(a)	regions 1, 4, 7, 8
		(b)	region 2 except Snohomish County
		(c)	region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to Riverside
		(d)	Grays Harbor, Mason, Kitsap, and Thurston counties of region 5
		(e)	Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line
		(f)	Pierce County, except those areas lying within T2D, 21, 22N, R1W and R1E, all sections

Name	Will be a "Class B designate" in all lands lying within:
(49)	loosestrife, wand <i>Lythrum virgatum</i>
	<ul style="list-style-type: none"> <li>(g) region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed</li> <li>(h) region 9 except Benton County</li> <li>(i) region 10 except Walla Walla County</li> <li>(j) Intercounty Weed Districts No. 51 and No. 52.</li> <li>(a) regions 1, 4, 7, 8</li> <li>(b) region 2 except Snohomish County</li> <li>(c) region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to Riverside</li> <li>(d) region 5 except King County</li> <li>(e) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line</li> <li>(f) region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed</li> </ul>
(50)	nutsedge, yellow <i>Cyperus esculentus</i>
	<ul style="list-style-type: none"> <li>(g) region 9 except Benton County</li> <li>(h) region 10 except Walla Walla County</li> <li>(i) Intercounty Weed Districts No. 51 and No. 52.</li> <li>(a) regions 1, 2, 3, 4, 5, 7, 8</li> <li>(b) region 6 except those areas lying between State Highway 26 and State Highway 28, and westerly of Dodson Road in Grant County, and except S 1/2, Sec. 2, T20N, R25E., W.M.</li> <li>(c) region 9 except: <ul style="list-style-type: none"> <li>(i) except those areas lying within the following boundary description within Yakima County: Beginning at the intersection of Highway 12 and Parker Heights Road and continuing easterly to Konnowac Pass Road follow said road north to the intersection of Konnowac Pass Road and Nightingale Road. The northern boundary shall be the Roza Canal, continuing from the established point at Nightingale Road. The boundaries will follow the Roza Canal easterly to the County Line Road. The east boundaries will be the Yakima/Benton County Line from a point beginning at the County Line and Highway 22 (near Byron) continuing westerly along Highway 22 (to near the city of Mabton) to the intersection of Highway 22 and the Reservation Boundary (Division Road) and continuing north to the Yakima River.</li> </ul> </li> </ul>



Name	Will be a "Class B designate" in all lands lying within:
	Then it will follow the river northwest to the Wapato-Donald Road continuing north along said road to Highway 12 then Highway 12 to Parker Heights Road.
	(ii) an area lying southerly of State Route 14 and within T2N, Ranges 13 and 14 E of Klickitat County
(51) oxtongue, hawkweed <i>Picris hieracioides</i>	(d) region 10 except Walla Walla County. (a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10 (b) region 8 except Skamania County.
(52) parrotfeather <i>Myriophyllum aquaticum</i>	(a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10 (b) region 8 except Clark, Cowlitz, and Wahkiakum counties.
(53) pepperweed, perennial <i>Lepidium latifolium</i>	(a) regions 1, 2, 3, 4, 5, 7, 8, 10 (b) Intercounty Weed Districts No. 51 and 52 (c) Kittitas County of region 6 (d) Adams County of region 6 except for the area west of Highway 17 and north of Highway 26.
(54) <u>poison-hemlock <i>Conium maculatum</i></u>	(a) <u>Clallam County and that area lying within Port Townsend city limits in Jefferson County of region 1</u> (b) <u>Snohomish and San Juan counties of region 2</u> (c) <u>Pend Oreille County of region 4</u> (d) <u>Kitsap and Thurston counties of region 5</u> (e) <u>Kittitas County of region 6</u> (f) <u>Lincoln County of region 7</u> (g) <u>Clark County of region 8.</u>
(55) primrose, water <i>Ludwigia hexapetala</i>	(a) regions 1, 2, 3, 4, 5, 6, 7, 9, 10 (b) region 8 except T8N, R3W, S14 of Cowlitz County.
<del>((55))</del> (56) puncturevine <i>Tribulus terrestris</i>	(a) Skagit County of region 2 (b) Kittitas County of region 6 (c) Adams County (d) Clallam County of region 1.
<del>((56))</del> (57) ragwort, tansy <i>Senecio jacobaea</i>	(a) regions 3, 4, 6, 7, 9, 10 (b) region 5, that portion of Pierce County lying south or east of a boundary beginning at the White River and State Highway 410, then west along State Highway 410 to intersection with State Highway 162 (Orting) to intersection with Orville Road, then south along Orville Road to intersection with Kapowsin Highway (304th Street East), then west following Kapowsin Highway to intersection with State Route 7, then south along State Route 7 to intersection with State Route 702, then west along State Route 702 to intersection with State Route 507, then southwest along State Route 507 to intersection with the Nisqually River.
<del>((57))</del> (58) <u>reed, common, nonnative genotype <i>Phragmites australis</i></u>	(a) <u>region 1</u> (b) <u>Island, San Juan and Snohomish counties of region 2</u> (c) <u>Okanogan County of region 3</u> (d) <u>Pend Oreille and Stevens counties of region 4</u> (e) <u>region 5 except Grays Harbor and Pierce counties</u> (f) <u>Kittitas County of region 6</u>

Name	Will be a "Class B designate" in all lands lying within:
<u>(59)</u>	Saltcedar <i>Tamarix ramosissima</i>
	<ul style="list-style-type: none"> <li>(g) <u>Yakima County of regions 6 and 9</u></li> <li>(h) <u>Lincoln County of region 7</u></li> <li>(i) <u>Clark and Lewis counties of region 8</u></li> <li>(j) <u>Klickitat County of region 9</u></li> <li>(k) <u>Asotin County of region 10.</u></li> <li>(a) regions 1, 2, 3, 4, 5, 7, 8, unless intentionally established prior to 2004</li> <li>(b) region 6 except Grant County, unless intentionally established prior to 2004</li> <li>(c) region 9 except Benton and Franklin counties, unless intentionally established prior to 2004</li> <li>(d) region 10 except Franklin County, unless intentionally established prior to 2004.</li> </ul>
<del>((58))</del> <u>(60)</u>	sandbur, longspine <i>Cenchrus longispinus</i>
	<ul style="list-style-type: none"> <li>(a) regions 1, 2, 3, 4, 5, 7, 8</li> <li>(b) Adams County of region 6 except for that area lying within Intercounty Weed District No. 52</li> <li>(c) Intercounty Weed District No. 51</li> <li>(d) Kittitas County of region 6.</li> </ul>
<del>((59))</del> <u>(61)</u>	skeletonweed, rush <i>Chondrilla juncea</i>
	<ul style="list-style-type: none"> <li>(a) regions 1, 2, 3, 5, 8<del>((9))</del></li> <li>(b) Franklin County except T13N, R36E; and T14N, R36E</li> <li>(c) Adams County except those areas lying east of a line running north from Franklin County along the western boundary of Range 36 East to State Highway 26 then north on Sage Road until it intersects Lee Road, then due north until intersection with Providence Road, then east to State Highway 261, then north along State Highway 261 to its intersection with Interstate 90, henceforth on a due north line to intersection with Bauman Road, then north along Bauman Road to its terminus, then due north to the Lincoln County line.</li> <li>(d) region 6 except that portion lying within Grant County that is southerly of State Highway 28, northerly of Interstate Highway 90 and easterly of Grant County Road I Northwest</li> <li>(e) Stevens County north of Township 33 North of region 4</li> <li>(f) Ferry and Pend Oreille counties of region 4</li> <li>(g) <u>region 9 except the Dallesport area in Klickitat County lying within Township 2N, Ranges 13 and 14</u></li> <li>(h) Asotin County of region 10</li> <li><del>((h))</del> (i) Garfield County south of Highway 12</li> <li><del>((h))</del> (j) Columbia County from the Walla Walla County line on Highway 12, all areas south of Turner Road; at Turner Road to the Garfield county line, all areas south and east of Turner Road</li> <li><del>((h))</del> (k) Whitman County lying in Ranges 43 through 46 East of Townships 15 through 20 North; T14N, Ranges 44 through 46 East; and T13N, Ranges 45 and 46 East.</li> </ul>
<del>((60))</del> <u>(62)</u>	sowthistle, perennial <i>Sonchus arvensis ssp. arvensis</i>
	<ul style="list-style-type: none"> <li>(a) regions 1, 2, 3, 4, 7, 8, 9, 10</li> <li>(b) Adams County of region 6</li> <li>(c) region 5 except for sections 28, 29, 30, 31, 32, and 33 in T19N, R1E of Thurston and Pierce counties.</li> </ul>

Name	Will be a "Class B designate" in all lands lying within:	
<del>((61))</del> <u>(63)</u> spurge, leafy <i>Euphorbia esula</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9, 10
	(b)	region 7 except as follows: <ul style="list-style-type: none"> <li>(i) T27N, R37E, Sections 34, 35, 36; T27N, R38E, Sections 31, 32, 33; T26N, R37E, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 26; T26N, R38E, Sections 5, 6, 7, 8 of Lincoln County</li> <li>(ii) T24N, R43E, Section 12, Qtr. Section 3, Parcel No. 9068 of Spokane County.</li> </ul>
<del>((62))</del> <u>(64)</u> spurge, myrtle <i>Euphorbia myrsinites</i> L	(a)	Pend Oreille County of region 4.
<del>((63))</del> <u>(65)</u> starthistle, yellow <i>Centaurea solstitialis</i>	(a)	regions 1, 2, 3, 5, 6, 8
	(b)	region 4 except those areas within Stevens County bounded by a line beginning at the intersection of State Highway 20 and State Highway 25, then north to intersection with Pinkston Creek Road, then east along Pinkston Creek Road to intersection with Highland Loop Road, then south along Highland Loop Road to intersection with State Highway 20, then west along State Highway 20 to intersection with State Highway 25
	(c)	region 7 except those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border
	(d)	Franklin County
	(e)	region 9 except Klickitat County
	(f)	in all lands lying within Asotin County, Region 10, except as follows: T11N, R44E, Sections 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35; T11N, R45E, Sections 21, 22, 23, and 25; T11N, R36E, Sections 19, 20, 21, 28, 29, 30, 31, 32, and 33; T10N, R44E, Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 15, and 16; T10N, R45E, Sections 23 and 24; T10N, R46E, Sections 7, 8, 17, 18, 19, 20, 21, 22, 27, 34, and 35; T9N, R46E, Sections 1, 2, 12, 13, 14, 23, 24, 25, 26, 35, and 36; T9N, R47E, Sections 18, 19, 30, and 31; T8N, R46E, Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 23, and 24; T8N, R47E, Sections 8, 17, 18, 19, 20, 29, 30, 31, and 32.
<del>((64))</del> <u>(66)</u> Swainsonpea <i>Sphaerophysa sal-sula</i>	(a)	regions 1, 2, 3, 4, 5, 7, 8
	(b)	Columbia, Garfield, Asotin, and Franklin counties
	(c)	an area beginning at the Washington—Oregon border at the southwest portion of Section 15, R32E, T6N, then north to the northwest corner of Section 3, R32E, T7N, then east to the northeast corner of Section 3, R36E, T7N, then south to the southeast portion of Section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning
	(d)	Weed District No. 3 of Grant County
	(e)	Adams County of region 6.
<del>((65))</del> <u>(67)</u> thistle, musk <i>Carduus nutans</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 9, 10
	(b)	Spokane and Pend Oreille counties.

Name	Will be a "Class B designate" in all lands lying within:	
<del>((66))</del> <u>(68)</u> thistle, plumeless <i>Carduus acanthoides</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 9, 10
	(b)	region 4 except those areas within Stevens County lying north of State Highway 20.
<del>((67))</del> <u>(69)</u> thistle, Scotch <i>Onopordum acanthium</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
	(b)	region 7 except for those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border
	(c)	Franklin County.
<del>((68))</del> <u>(70)</u> toadflax, Dalmatian <i>Linaria dalmatica ssp. dalmatica</i>	(a)	regions 1, 2, 5, 8, 10
	(b)	Douglas County of region 3 lying south of T25N and west of R25E
	(c)	Okanogan County lying within T 33, 34, 35N, R19, 20, 21, 22E, except the southwest, southeast, and northeast quarters of the northeast quarter of section 27, T35N, R21E; and the northeast quarter of the southeast quarter of section 27, T35N, R21E
	(d)	Kittitas, Chelan, Douglas, and Adams counties of region 6
	(e)	Intercounty Weed District No. 51
	(f)	Weed District No. 3 of Grant County
	(g)	Lincoln and Adams counties
	(h)	The western two miles of Spokane County of region 7
	(i)	region 9 except as follows:
	(i)	those areas lying within Yakima County
	(ii)	those areas lying west of the Klickitat River and within Klickitat County.
<del>((69))</del> <u>(71)</u> watermilfoil, Eurasian <i>Myriophyllum spicatum</i>	(a)	regions 1, 9, 10
	(b)	region 7 except Spokane County
	(c)	region 8 except within 200 feet of the Columbia River
	(d)	Adams County of region 6
	(e)	in all water bodies of public access, except the Pend Oreille River, in Pend Oreille County of region 4.

**AMENDATORY SECTION** (Amending WSR 06-24-056, filed 12/4/06, effective 1/4/07)

**WAC 16-750-015 State noxious weed list—Class C noxious weeds.**

Common Name	Scientific Name
archangel, yellow	<i>Lamiastrum galeobdolon</i>
babysbreath	<i>Gypsophila paniculata</i>
beard, old man's	<i>Clematis vitalba</i>
bindweed, field	<i>Convolvulus arvensis</i>
(butterfly-bush	<i>Buddleja davidii</i> )
canarygrass, reed	<i>Phalaris arundinacea</i>
cockle, white	<i>Silene latifolia ssp. alba</i>
cocklebur, spiny	<i>Xanthium spinosum</i>
cress, hoary	<i>Cardaria draba</i>
odder, smoothseed alfalfa	<i>Cuscuta approximata</i>
goatgrass, jointed	<i>Aegilops cylindrica</i>

Common Name	Scientific Name
groundsel, common	<i>Senecio vulgaris</i>
<u>hawkweed, common</u>	<i>Hieracium lachenalii</i>
hawkweed, <u>other</u> nonnative species	<i>Hieracium sp.</i> , except species designated in the note in the left-hand column

**Note:**  
This listing includes all species of Hieracium, except the following:

- Species designated as Class A noxious weeds in WAC 16-750-005;
- Species designated as Class B noxious weeds in WAC 16-750-011;
- Native species designated below:

Common Name	Scientific Name
– Canada hawkweed (H. canadense)	
– houndstongue hawkweed (H. cynoglossoides)	
– long-beaked hawkweed (H. longiberbe)	
– narrow-leaved hawkweed (H. umbellatum)	
– slender hawkweed (H. gracile)	
– western hawkweed (H. albertinum)	
– white-flowered hawkweed (H. albiflorum)	
– woolley-weed (H. scouleri)	
henbane, black	<i>Hyoscyamus niger</i>
iris, yellow flag	<i>Iris pseudacorus</i>
ivy, English, 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica'
	<i>Hedera helix</i> 'Baltica'
	<i>Hedera helix</i> 'Pittsburgh'
	<i>Hedera helix</i> 'Star'
mayweed, scentless	<i>Matricaria perforata</i>
((poison-hemlock	<i>Conium maculatum</i> ))
pondweed, curly-leaf	<i>Potamogeton crispus</i>
((reed, common, nonnative genotypes	<i>Phragmites australis</i> ))
rye, cereal	<i>Secale cereale</i>
spikeweed	<i>Hemizonia pungens</i>
St. Johnswort, common	<i>Hypericum perforatum</i>
tansy, common	<i>Tanacetum vulgare</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
toadflax, yellow	<i>Linaria vulgaris</i>
water lily, fragrant	<i>Nymphaea odorata</i>
whiteweed, hairy	<i>Cardaria pubescens</i>
willow-herb, hairy	<i>Epilobium hirsutum</i>
wormwood, absinth	<i>Artemisia absinthium</i>

Submit Written Comments to: Juan Huey-Ray, 406 South Water Street, Olympia, WA 98504, e-mail [jhuey-ray@omwbe.wa.gov](mailto:jhuey-ray@omwbe.wa.gov), fax (360) 586-7079, by October 23, 2007.

Assistance for Persons with Disabilities: Contact Tammi Hazlitt by October 11, 2007, (360) 753-9691.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this notice is to add an additional hearing and to extend the deadline for submittal of written comments.

Statutory Authority for Adoption: RCW 39.19.030 and 43.86A.060 (sections 1 and 2, chapter 500, Laws of 2007).

Statute Being Implemented: RCW 43.86A.060 (sections 1 and 2, chapter 500, Laws of 2007).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of minority and women's business enterprises, governmental.

Name of Agency Personnel Responsible for Drafting: Juan Huey-Ray, 406 South Water Street, Olympia, WA 98504, (360) 704-1197; Implementation and Enforcement: Cynthia Cooper, 406 South Water Street, Olympia, WA 98504, (360) 753-9693.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose more than a minor cost on businesses it impacts.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs imposed by the rules.

October 3, 2007  
Cynthia R. Cooper  
Director

**WSR 07-20-130**  
**PROPOSED RULES**  
**OFFICE OF MINORITY AND**  
**WOMEN'S BUSINESS ENTERPRISES**

[Filed October 3, 2007, 11:28 a.m.]

Continuance of WSR 07-17-184.

Preproposal statement of inquiry was filed as WSR 07-14-153.

Title of Rule and Other Identifying Information: Linked deposit program implementation, a new chapter is added to Title 326 WAC and chapters 326-02 and 326-20 WAC are amended.

Hearing Location(s): Bates Technical College, Downtown Campus, Main Building, Room M-130, 1101 South Yakima Avenue, Tacoma, WA 98405, on October 18, 2007, at 4:30-6:30 p.m.

Date of Intended Adoption: November 1, 2007.